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The meeting was called to order at 10.10 a.m.

The meeting was suspended at 10.10 a.m. and resumed at 10.30 a.m.

Agenda item 85: The rule of law at the national and international levels (A/65/318)

1. **The Deputy Secretary-General**, introducing the report of the Secretary-General (A/65/318), said that the rule of law was a broad and complex concept, embedded in the history of all cultures and nations, as well as in the long-standing efforts of States to create an international community based on law. Strengthening the rule of law was central to achieving the vision of the United Nations for a just, secure, and peaceful world. It was linked to critical goals such as poverty reduction and sustainable human development, as well as to peacebuilding and peacekeeping, accountability for gross violations of human rights, and combating organized crime and terrorism. It was also integrally tied to global governance, the theme of the Presidency of the ongoing General Assembly session.

2. To help the Sixth Committee focus its deliberations, the annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/65/318) provided an overview of the extensive efforts undertaken by the United Nations. The Committee's engagement had been crucial to maintaining international attention. With its support, the Organization was refining its understanding of the rule of law at the international level. The recent attention by the Security Council was also timely and welcome.

3. The past year had witnessed the importance of international judicial and non-judicial mechanisms that promoted compliance with international law and contributed to conflict prevention as well as efforts to combat impunity. Those mechanisms, however, required further strengthening. At the 2010 Review Conference of the Rome Statute, States had reaffirmed their commitment to its full implementation. Moreover, they had reaffirmed that international justice was complementary to national justice. The international community needed to contribute more to positive complementarity by further reinforcing or developing national capacity to combat impunity. She encouraged those Member States that had not done so to accede to major international instruments, including two that marked important anniversaries in 2011: the 1951 Convention on the Status of Refugees and the 1961 Convention on the Reduction of Statelessness.

4. Further, the implementation of international norms at the national level remained a critical challenge. It was most welcome that the debate in the Committee was focusing on the subtopic of the laws and practices of Member States in implementing international law.

5. The 2010 report sought to contribute to the debate by sharing the experiences of United Nations mechanisms and approaches, such as model laws, peer reviews, and treaty-based periodic reviews, that had positively affected implementation by Member States. Those experiences showed that States were being assisted in their domestic implementation of standards by increased linkages between monitoring and review mechanisms and by targeted capacity-building and technical assistance. The Secretary-General's report also provided an update on efforts to enhance the coherence and coordination of United Nations rule of law activities.

6. The United Nations had come a long way since Member States, in the 2008 World Summit Outcome, had requested that States and the Organization itself should strengthen their attention to the rule of law. The United Nations assisted national authorities in more than 125 Member States in every region of the world and in all contexts, from conflict prevention to peacekeeping to development. In about 60 countries, at least three United Nations entities were engaged in such support. Five or more entities were carrying out activities in more than 35 countries, 17 of which hosted United Nations missions engaged in peacemaking, peacekeeping and peacebuilding. The overall trend was towards joint and comprehensive initiatives by key operational entities, particularly in conflict and post-conflict States. Joint efforts were being undertaken by the Department of Political Affairs, the Department of Peacekeeping Operations, the Office of the High Commissioner for Human Rights, the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime and other bodies in Haiti, the Democratic Republic of the Congo, Guinea-Bissau and elsewhere. At the regional and subregional levels, the United Nations was partnering with others to increase capacities to effectively tackle transnational organized crime and corruption. The West African Coast Initiative was one such example.

7. The Rule of Law Resource and Coordination Group, chaired by the Deputy Secretary-General, brought together nine United Nations entities and had made steady progress in implementing its first Joint Strategic Plan covering the period 2009 to 2011. Recent achievements included the development and issuance by the Secretary-General of a common approach to transitional justice. Steps were also being taken to enhance common approaches to complex issues such as land tenure, sexual violence and informal justice systems. In two target countries, Liberia and Nepal, a joint United Nations programme was being developed to achieve more strategic and coordinated delivery of rule of law assistance in support of and in cooperation with national actors. Increasing the visibility of United Nations efforts in those countries and ensuring the availability of financial and other resources were critical objectives.

8. Also in the year 2010, leaders from a range of developing and post-conflict countries had gathered to review the effectiveness of rule of law assistance from their national perspectives. Despite the diversity of countries and expertise, a consensus had emerged on the imperative of prioritizing national capacity and ownership in order to manage reform across the many complex institutions that contributed to the rule of law. The need to better address issues related to traditional and informal justice systems had also been emphasized.

9. The most recent outcome of the Joint Strategic Plan was to support Member States in holding a high-level event of the General Assembly to reiterate Member States' commitment to the rule of law at the national and international levels. It had been five years since Heads of State and Government had discussed the matter. A high-level event would allow for a review of what more needed to be done, and the Secretary-General therefore welcomed that initiative.

10. Despite the progress, critical gaps and challenges continued to present themselves. Steadfast support from Member States was needed to address them. Since 2006, the United Nations system had enhanced its capacities, including through the recent establishment of the Standing Justice and Corrections Capacity alongside the Standing Police Capacity in the Department of Peacekeeping Operations. UNDP had launched global programmes on the rule of law and access to justice in its Bureau for Crisis Prevention and Recovery and its Bureau for Development Policy. The deployable mediation team of the Department of Political Affairs had provided advice on rule of law issues, such as constitution-making.

11. Still, the financial resources allocated for strengthening the rule of law had fallen short, especially when compared to statements by Member States about the importance they attached to that issue. More needed to be done to enable the Organization to better recruit, train and retain high-quality personnel and deploy them in a rapid and predictable manner.

12. The external environment, which included donors and providers of bilateral assistance, remained fragmented. That crowded field spanned the legal, development, security and political disciplines. Recipients of assistance were not sufficiently part of policy discussions on the rule of law. It was time to think creatively about developing a global forum for dialogue among all stakeholders. In order to ensure early and strategic responses, more consistent and comprehensive needs and threat assessments in close cooperation with national actors were required. A strategic, system-wide and sector-wide approach needed to be taken, which would embrace security sector reform and equal attention to all components of the civil and criminal justice system, including prisons. Better and ongoing monitoring was also required to evaluate the impact of those efforts.

13. Finally, the United Nations needed to be ready to address the political and institutional aspects of rule of law development. The rule of law was linked to sovereignty, control over the use of force and resources and other sensitive matters. She thanked Member States for their generous contributions, which helped sustain what had been set in motion, and looked forward to doing even more to realize the United Nations vision of a world governed by the rule of law.

14. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the delayed publication of the Secretary-General's report (A/65/318) was cause for serious concern, as it adversely affected the deliberations of the Committee. He requested assurances from the Secretariat that such a delay would not occur in the future. He asked the Bureau to provide delegations that were not ready to express their positions with an opportunity to do so later in the session before concluding the discussion on the agenda item.

15. **Mr. Charles** (Trinidad and Tobago) concurred and noted that delays in the publication of reports posed a particular difficulty for small delegations.

16. **The Chairperson** said that the Bureau would announce when the debate on the agenda item could be resumed.

17. *It was so decided.*

18. **Mr. Janssens de Bisthoven** (Belgium), speaking on behalf of the European Union; the candidate countries Croatia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Azerbaijan and Ukraine, said that the European Union welcomed the adoption of General Assembly resolution 64/116 and the inclusion of the rule of law as a standing item on the agenda of the General Assembly and of the Sixth Committee. The laws and practices of Member States in implementing international law were an important aspect of the item at hand.

19. The European Union was an organization based on successive international treaties and thus had experience in the implementation of its founding treaties by the Member States and had developed its own legal system. The entry of the Treaty of Lisbon into force had reaffirmed respect for the rule of law as an integral part of the European Union's legal system and a guiding principle for its action on the international scene.

20. Respect for the rule of law was an essential condition for peace and stability, while legal empowerment of the poor was an effective tool in the eradication of poverty. International law and the rule of law were the foundations of the international system, with the United Nations at its core, and the European Union welcomed efforts to strengthen the rule of law within the Organization itself.

21. States had a fundamental responsibility towards everyone within their jurisdiction to protect human rights and fundamental freedoms. For its part, the European Union had reaffirmed internationally recognized human rights standards within its own legal order through the Charter of Fundamental Rights, which was expressly recognized by the Treaty of Lisbon. European Union citizens were provided with the necessary guarantees of the right to an effective judicial remedy before the European Union's judicial institutions when they were affected by measures taken by European Union institutions.

22. At the international level, the European Union attached great importance to strengthening international criminal justice and called on all States Members of the United Nations to ratify or accede to the Rome Statute and implement it in their national legal order, and on States parties to the Statute to enforce decisions of the International Criminal Court.

23. The European Union supported the initiatives set out in the last two reports of the Secretary-General (A/64/298 and A/65/318) and the critical work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit, and it underlined the importance of providing the Unit with needed resources. The European Union supported the convening of a high-level meeting of the General Assembly on the rule of law as suggested in the Joint Strategic Plan 2009-2011 published by the Group.

24. The European Union supported United Nations efforts to promote the rule of law at the national level and itself was engaged in similar efforts, such as encouraging the integration of international norms and standards through bilateral dialogues and cooperation agreements, assisting post-crisis countries in rebuilding judicial structures and integrating the rule of law component in its civilian crisis management operations.

25. **Ms. Revell** (New Zealand), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that the rule of law was essential to achieving the security, human rights and development goals of the United Nations. Common law countries needed to translate international legal obligations into domestic legislation, which in turn needed to be fully implemented to allow for peaceful coexistence, cooperation and development of relations between States.

26. The CANZ group of countries valued the work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit in assisting Member States in formulating legislation and policies to reflect international law instruments and principles. Improved technical assistance was valuable in supporting the rule of law, and the CANZ group of countries supported the work of the Commonwealth Secretariat in strengthening the capacity of national jurisdictions to implement international legal conventions, combat

corruption and terrorism and strengthen criminal justice systems. The CANZ group of countries encouraged States parties to implement the Rome Statute domestically, and it supported efforts to improve domestic jurisdictions capacity to prosecute serious international crimes.

27. The CANZ countries were active in promoting the rule of law. New Zealand was assisting Pacific and South Asian countries with the domestic implementation of, and compliance with, international counter-terrorism, anti-corruption and anti-money-laundering legal instruments as well as providing training to criminal justice offices and prosecutors. Australia's efforts in the Pacific, South-East Asia and Africa additionally focused on modernizing legislation and aiding the implementation of international instruments pertaining to transnational crime. A national framework document released in the summer of 2010 established priorities and principles for engagements with the Pacific region aimed at strengthening the rule of law and promoting access to justice and human rights.

28. For its part, Canada was a strong supporter of the international criminal justice system and was also engaged in strengthening the rule of law in Afghanistan, having provided substantial funding for the reform of the Afghan National Police and the operation of the justice and corrections sectors. It was pursuing a national action plan implementing Security Council resolutions 1888 (2009) and 1889 (2009) on women and peace and security by engaging with multilateral partners in conflict-affected contexts. It also supported the updating of a guide to human rights law with regard to the protection of children in armed conflict in accordance with Security Council resolution 1612 (2005).

29. The CANZ countries recognized the need for effective assistance to support States in the domestic implementation of international legal norms and standards to ensure effective and multilateral engagement based on the rule of law.

30. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that it was crucial to maintain a balance between the national and international dimensions of the rule of law. To ensure that international relations were based on the rule of law, certain elements were essential. All States should have the opportunity to participate in international law-making processes. All States should comply with their obligations under both treaty law and customary international law. The selective application of international law must be avoided. The legitimate and legal rights of States under international law must be respected. Lastly, the cornerstone of the rule of law at the international level was the principle of the prohibition of the threat or use of force and the peaceful settlement of disputes.

31. The Non-Aligned Movement encouraged States to resort to the mechanisms established under international law for the peaceful settlement of disputes, including the International Court of Justice and treaty-based courts such as the International Tribunal for the Law of the Sea, as well as arbitration. It called upon the General Assembly and the Security Council to make use, whenever appropriate, of their right under article 96 of the Charter to request advisory opinions on legal questions from the International Court of Justice.

32. All States should fulfil their obligation to promote the observance and protection of all human rights and fundamental freedoms in accordance with international law. The purposes and principles of the Charter, and the principles of international law were paramount in achieving peace and security, the rule of law, economic development and social progress, and human rights. Members of the Non-Aligned Movement remained concerned at the use of unilateral measures, given their negative impact on the rule of law and international relations.

33. The Movement underscored the need for Member States to fully respect the functions and powers of each principal organ of the United Nations, especially the General Assembly, and to maintain the balance among them. Close cooperation and coordination among all the principal organs was essential. The Movement remained concerned that the Security Council was encroaching on the functions and powers of the General Assembly and the Economic and Social Council by taking up issues within the competence of those two organs.

34. The General Assembly must play a leading role in promoting efforts to ensure respect for the rule of law. The international community must not, however, supplant the national authorities in their task of establishing or strengthening the rule of law. Assistance and cooperation should be provided at the

request of Governments and strictly within the respective mandates of the United Nations funds and programmes. Account should be taken of the customs and the political and socio-economic features of each country, and the imposition of pre-established models should be avoided. Appropriate mechanisms should be established to enable Member States to keep abreast of the work of the Rule of Law Unit and to ensure regular interaction between the Unit and the General Assembly. He welcomed the new system of administration of justice in the United Nations and supported initiatives to hold United Nations personnel accountable for misconduct during a deployment on mission.

35. Lastly, he expressed grave concern over the failed coup d'état against the Government of Ecuador and reiterated the Movement's full support for the consolidation of the new political, economic and social structure under the political authority of the legitimately elected Government of the constitutional President of Ecuador, Rafael Correa; it called on the international community to do the same.

36. **Mr. Christian** (Ghana), speaking on behalf of the Group of African States, said that the rule of law was crucial to the maintenance of stability, peace and security and was conducive to good governance. A fair and equitable international legal order must be ensured: to that end, various international institutions, including the Security Council, needed urgently to be reformed so as to be more representative of Member States and to give their decisions greater legitimacy in the eyes of the international community.

37. International law could not be effective without domestic implementation. The African Group called upon States to ensure not only that international law took into account the needs of more vulnerable States, but also that it was effectively implemented in domestic legal systems. The fundamental principle of equality before the law must be scrupulously adhered to, and the use of double standards must be avoided.

38. Capacity-building was key to ensuring the implementation of international law in domestic legal systems. He noted with satisfaction the activities of the Rule of Law Unit and encouraged the Unit to explore initiatives that would enable donors, recipients and other entities involved in financing rule of law activities to work in a more coordinated manner. The African Group stood ever ready to support the Rule of Law Unit in developing more effective mechanisms to assess the impact of its rule of law activities and to harmonize the various monitoring mechanisms used by United Nations agencies.

39. The African Union Commission on International Law had been established in May 2010 to promote the codification and progressive development of international law and a better appreciation of the role of international law in the achievement of States' development objectives. The United Nations should explore the prospect of working with that Commission and African academic institutions, with a view to building the capacity of African Member States in the teaching, study, dissemination and wider appreciation of international law. Capacity-building activities should be carried out on the basis of effectiveness and local or national ownership in determining needs and priorities. Lastly, the proposal to hold a high-level segment of the General Assembly meeting on the rule of law in 2011 merited serious consideration.

40. **Mr. Kleib** (Indonesia), speaking on behalf of the Association of Southeast Asian Nations (ASEAN), said that the ASEAN Charter reaffirmed the commitment of all ASEAN member States to the principles of the rule of law, good governance, democracy, and constitutional government, and to the upholding of the United Nations Charter and international law. Accordingly, in April 2010, ASEAN had adopted a protocol to the ASEAN Charter on dispute settlement mechanisms. ASEAN member States were currently developing the rules for referral of unresolved disputes to the ASEAN Summit and other rules to enhance the relevant legal framework, and the ASEAN Intergovernmental Commission on Human Rights (AICHR) would be inaugurated shortly. ASEAN was committed to creating a community of South-East Asian nations grounded upon a commitment to the rule of law at the national, regional and international levels.

41. **Ms. Quezada** (Chile), speaking on behalf of the Rio Group, said that the same basic notion that informed the understanding of the rule of law at the international level constituted Member States' common understanding of the concept at the national level: societies must be governed by agreed values and by principles and norms created through predictable and recognized processes. The essence of the rule of law at the national level was full respect for human rights and fundamental freedoms.

42. In practice, it was difficult to draw a sharp distinction between the rule of law at the international and national levels. The link between the two was best exemplified through the cooperation of States in making international law work, notably by means of domestic implementation of international obligations, which was a necessary condition for the consolidation of the rule of law at the international level. At the same time, in a mutually reinforcing process, the implementation of international norms and standards at the national level helped to strengthen national rule of law institutions.

43. The Rio Group welcomed and supported the Secretary-General's view that national perspectives should be at the centre of United Nations rule of law assistance. In order to be successful, any programme aimed at strengthening the rule of law at the national level must reflect an in-depth understanding of the local socio-political context and needs. "Local ownership" was not a self-evident concept, however, and needed to be clarified in each situation through capacity-building and technical assistance. The Rio Group therefore welcomed the efforts to build partnerships and engage national stakeholders, donors and the United Nations in a pluralistic dialogue.

44. As overall coordination was key to the success of United Nations rule of law activities, the Rio Group also welcomed the establishment of the Rule of Law Coordination and Resource Group and supported the idea of holding a high-level meeting of the General Assembly on the rule of law. Such a gathering would provide the opportunity for Member States to explore ways of improving coordination, promoting dialogue and reiterating their commitment to the rule of law.

45. Regional integration agreements and mechanisms such as the Rio Group played a significant role in furthering the rule of law within their member States. The Governments of the Rio Group reaffirmed their strong commitment to the preservation of democratic institutions, the rule of law, the constitutional order, social peace and full respect for human rights. They would not tolerate any challenge to the institutional authority of legitimately elected officials, and they therefore condemned the recent attempted coup d'état against the President of Ecuador and supported legal action to bring those responsible to justice.

46. **Mr. Barriga** (Liechtenstein) noted with satisfaction the results achieved by the Rule of Law Coordination and Resource Group and the Rule of Law Unit in improving the effectiveness of activities to strengthen the rule of law worldwide. His delegation furthermore supported the approach taken by the Group and the Unit which involved providing substantive guidance on key rule of law issues as well as a forum for coordination.

47. The United Nations was uniquely placed to facilitate knowledge transfer and to provide capacity-building at the request of States. Rule of law assistance promoted the domestic implementation of international human rights law and criminal justice standards, while also playing a crucial role in conflict prevention, peacebuilding and sustainable development. He therefore looked forward to the results of the pilot country exercise.

48. Noting that the assistance-related challenges outlined in the Secretary-General's report (A/65/318), which were especially worrying at a time when donor countries, facing budgetary constraints, were under pressure to downsize some of their assistance programmes, he supported the efforts made by the Group and Unit to expand partnerships and to maximize coordination. In the long term, it was hoped that the Group and the Unit would play a central role in promoting donor coherence and the perspective of recipient countries in rule of law assistance worldwide. He also supported the call for a high-level meeting on the rule of law.

49. While progress had been made in recent years on strengthening the rule of law at the institutional level, the conceptual question of the Organization's relationship to international human rights law remained unaddressed. The time had come to align the law applicable to the United Nations with relevant developments in international law. Such an exercise must necessarily take into account the specific nature of the Organization, including the mandate of the Security Council under the Charter.

50. The Secretary-General's report usefully highlighted the role of international and hybrid courts and tribunals. The fact that international adjudication remained the exception, rather than the rule, however, raised questions of capacity within international and hybrid institutions, and above all at the national level. While the work of the International Criminal Court had had a catalytic effect on the strengthening of domestic criminal justice systems, the Court itself had no direct

role in capacity-building. Within the United Nations system, no entity was clearly designated as the leading provider of assistance to strengthen domestic capacity to investigate the most serious crimes under international law. Relevant assistance was not simply a matter of post-conflict peacebuilding, but of prevention of crimes and conflict. The United Nations Office on Drugs and Crime was well placed to take a leading role in that regard; he suggested that the Rule of Law Coordination and Resource Group should examine the issue and make relevant recommendations.

51. **Ms. Rodríguez-Pineda** (Guatemala), referring to paragraph 52 of the report, said that in its three years of existence the International Commission against Impunity in Guatemala had posted significant successes in its areas of responsibility, including prosecution of paradigm cases, technical training and the promotion of legislation to enhance the State's capacity to end impunity for crimes committed by illegal security forces and clandestine security organizations. Nonetheless, despite the signing of the Agreement on a Firm and Lasting Peace in 1996, such groups not only had continued to operate with impunity but had evolved into organized crime structures, forming symbiotic relationships with transnational organized crime groups.

52. The International Commission was a novel and effective model for institutional strengthening that had helped to professionalize Guatemala's national institutions. Nevertheless, the Commission's main national counterpart, the Office of the Public Prosecutor, required further strengthening and capacity-building in order to ensure that it would be able to continue investigating and prosecuting cases after the Commission's mandate had ended.

53. The development of a culture of tolerance, respect for the rule of law and rejection of impunity called for collective efforts. Initiatives aimed at promoting the rule of law must be adequately funded and equipped to enable them to fulfil their mandate. Indeed, the Commission's successes would not have been possible without the support of the international community, in particular the countries that contributed financially to the Commission's work. Those countries and the United Nations had invested in an initiative that had yielded tangible results. Most importantly, the Commission had shown that it was possible to fight impunity in Guatemala.

54. Her delegation supported the work of the Rule of Law Coordination and Resource Group and urged the United Nations to continue promoting and strengthening the rule of law throughout the world.

55. **Mr. Nikolaichik** (Belarus) said that his country actively participated in international law-making and the progressive development and codification of international law. The effort to strengthen and coordinate United Nations rule of law activities had significant potential for increasing transparency at the United Nations and for clearly identifying the needs of all Member States.

56. Increasing the international law component in the decision-making process of United Nations bodies would raise the authority of international law as a whole. His delegation viewed positively the wider use of the International Court of Justice and other international courts, whose role was both to ensure the civilized settlement of disputes and the clarification and interpretation of the norms of international law by leading experts. The politicization of such courts, however, could undermine their authority and effectiveness, the commitment of States to peaceful dispute resolution based on international law and the principle of the rule of law itself.

57. Belarus stringently observed its obligations under international law, as evidenced by the embodiment of generally accepted principles of international law in its Constitution and key national legislation. One of those was the peremptory principle of *pacta sunt servanda*, the observance of which must not be affected by the differing conceptual views of States on the relationship between domestic and international law or on the concrete practices of States in implementing their obligations under international law. His country's domestic law on international treaties, adopted in 2008, set out the modalities of treaty accession, implementation, suspension and withdrawal. Legal norms contained in international instruments to which Belarus was a party were incorporated into national legislation and were directly applicable, with the exception of cases where the prior adoption of a domestic legal instrument was necessary for the application of certain norms.

58. While the primary responsibility for implementing international instruments lay with Member States, the United Nations should search for more effective methods of providing appropriately tailored support for that endeavour. In that regard, the

sharing of knowledge among international legal scholars was especially important.

59. **Ms. Flores** (Honduras) said that justice was an essential element of the rule of law. Legal certainty built on a foundation of grave violations of justice and human rights was an aberration. The Sixth Committee had a responsibility to ensure that any norms developed within the United Nations on the subject reflected a commitment to justice, responded to needs and realities at the national level and served the common good. If laws were outdated or at odds with social objectives, they became unjust, ineffective and difficult to enforce. The law could not be seen as something hermetically sealed, impervious to the natural evolution of societies. Rather, like human beings themselves, it must adapt to changes in the environment. In order to ensure that the concept of justice was enshrined in the law, States should enhance the efficiency of the legislative process, adapting legislation to social needs and anticipating future contingencies.

60. The rule of law had been a prominent topic of discussion at the recent High-level Plenary Meeting of the General Assembly on the Millennium Development Goals. The primary aim of that event had been the achievement of economically and socially just societies for current and future generations, an objective that could not be reached without a solid legal foundation. Indeed, the resolution adopted during the High-level Plenary Meeting had affirmed the importance of freedom, peace and security, and respect for all human rights, including the right to development and the rule of law. Her delegation welcomed the inclusion in that resolution of policies aimed at legally empowering women in order to give them greater equality of opportunity for participation in policymaking and legislative processes, local decision-making, land ownership and access to financing.

61. The magnitude of the challenge of ensuring legal equality for the poorest and most vulnerable population groups could not be underestimated. It would never be possible to meet that challenge in the absence of action by the State to uphold the rights of such groups, including protecting them from the informal justice mechanisms that governed the day-to-day lives of the poor in many developing countries. The Rule of Law Unit had a valuable role to play in addressing that situation through the coordination of cooperation programmes in the area of law and social justice, as did the United Nations Development Programme in its work with respect to justice and global security.

62. **Ms. Matapo** (Zambia) said that promotion of and respect for the rule of law at both national and international levels was crucial to sustainable development, the protection of human rights and the establishment of effective, efficient and independent judicial systems and good governance. In order to promote adherence to the rule of law, it was imperative for States to develop legal and institutional frameworks that were clear and consistent in their application and were well-structured, financed and equipped. They must be administered by appropriately trained staff and must be held accountable.

63. To foster the rule of law at the national level, her Government had established several oversight institutions, including a Human Rights Commission, which ensured the accountability of public, judicial and law enforcement officers and promoted fairness in the application of the law. Other measures included a programme designed to ensure access to justice for people in vulnerable situations, the incorporation of human rights education in the training of law enforcement personnel and the enactment of a whistleblower act, which enhanced accountability by enabling people to disclose unlawful or irregular conduct by public officials or by their employers, without fear of reprisal. Zambia had also enacted the Forfeiture of Proceeds of Crime Act, which, inter alia, domesticated the United Nations Convention against Corruption.

64. Zambia would hold presidential and general elections in 2011, another testament to its adherence to the rule of law. The international community was welcome to observe the elections. Despite the aforementioned efforts, however, implementation of the rule of law remained a challenge owing to scarcity of resources to support the relevant institutions and mechanisms and enable capacity-building and the expansion and modernization of the legal infrastructure, particularly at the local level and in rural areas. Her Government therefore called upon the United Nations and bilateral partners to render technical assistance to enable the country to strengthen its capacity for the implementation of international norms and standards at the national level.

65. **Ms. Taratukhina** (Russian Federation) said she deplored the late issuance of the Secretary-General's

report and expressed the hope that such documents would in future be made available in a timely fashion.

66. Her delegation welcomed the activities carried out by the United Nations to promote the rule of law at the national level through the development of a comprehensive rule of law strategy, support for the establishment of civil society institutions and targeted measures to assist populations in conflict and post-conflict areas, including administration of justice in transitional periods, campaigns to raise legal literacy and improvement of conditions in penitentiary institutions.

67. It was Governments that had the competence to determine the means for putting international standards into domestic practice, if such standards did not themselves set out such procedures. The Russian Federation had a great deal of experience in that area. On the basis of its Constitution, particularly article 15 thereof, it had adopted a large body of legislation and regulations for the implementation of international standards and treaties. Her Government approached each international instrument from the standpoint of its specific features, choosing the most appropriate tools for its implementation. For example, it viewed the sanctions set out in Security Council resolutions as fixed measures that must be applied exactly as envisaged by the Security Council.

68. Her Government was therefore uncomfortable with any attempts at broadening the interpretation of sanctions during their implementation at national level. The true purpose of national implementation of legal norms that had been agreed on through negotiation and compromise at the international level was not the creation of a new regime, but their incorporation as such, and within their own parameters, into a national legislative regime.

69. **Mr. Karanouh** (Lebanon) said that the United Nations had been established in order to preserve international peace and security. For that reason, Chapter IV of the Charter provided for the pacific settlement of disputes. However, that principle had been applied only selectively. Such a state of affairs blatantly contravened the rule of law. It created the perception that the international community was unable to prevent certain States from violating national and territorial sovereignty or the right to self-determination. When some States appeared to be above international law, the image and effectiveness of the United Nations suffered. His country had a right, indeed a duty, to question the selectivity underlying the implementation of resolutions, imposition of sanctions and prosecution of crimes against humanity, and the enforcement of judgments of the International Court of Justice.

70. The equality of States was a cornerstone of the rule of law. However, the international system had undergone substantial change since the establishment of the Organization. The time had come to review the composition of the Security Council, which pressed for democracy and justice, and should therefore make its own processes more democratic, equitable and fair.

71. Sanctions were another means to preserve international peace and security and must therefore be applied in a transparent and equitable manner, in compliance with the Charter and fundamental human rights. The appointment of an Ombudsperson to assist the Security Council Committee established pursuant to resolution 1267 (1999) was therefore a welcome step, as was the recognition of humanitarian exceptions. However, further action would be required; counter-terrorism activities could not come at the expense of human rights.

72. His delegation welcomed the role of the United Nations in defending civilian victims of war and hoped that the Organization would be steadfast in confronting the violations committed against the Palestinian people. Lebanon appreciated the role of the Organization in building capacities and helping to consolidate good governance, democracy and human rights, all of which were components of the rule of law at the domestic level.

73. International and hybrid courts had been established in order to prosecute the most serious crimes, and hence preserve international peace and security. The Lebanese people hoped that the Special Tribunal for Lebanon would uncover the truth, deliver justice and allow wounds to heal, while eschewing vindictiveness and politicization. International peace and security must be founded on the force of law, rather than the law of force.

74. **Mr. Rodiles Bretón** (Mexico) said that there was an essential interdependence between the rule of law at the international and national levels. Effective implementation of international law required the rule of law at the domestic level, while national rule of law created expectations of international law. The United Nations and other international institutions must take into account local needs while striving to strengthen

the rule of law at the national level, including through technical assistance and other measures relevant to criminal justice and post-conflict situations.

75. The work of the International Criminal Court and other special international tribunals had helped to strengthen the rule of law at the national level. National cooperation was as indispensable as judicial capacity-building at the national level and applied to new challenges, such as piracy, where the strengthening of domestic legal systems was a more long-term solution.

76. The increasing proliferation of international legal obligations posed a number of challenges to effective domestic implementation and to the integrity of international law. It was of the utmost importance to take a comprehensive approach based on the promotion of the rule of law at both the national and the international levels. Specifically, counter-terrorism measures must respect human rights and targeted sanctions should be consistent with due process of law. He echoed other delegations' calls for an effective remedy in such areas. The rule of law offered a general framework of legitimacy with which to face the most diverse global challenges. Mexico thus attached great importance to global legal pluralism.

77. His delegation supported the proposal for a high-level segment of the General Assembly on the rule of law, to be held in 2011. Lastly, he reiterated his Government's full support to the President of Ecuador, and to democracy and the rule of law in that country.

78. **Mr. Gouider** (Libyan Arab Jamahiriya) said that the United Nations should take the most prominent role in upholding international law. In order to be worthy of the name, implementation of the rule of law must be earnest and transparent, eschewing selectivity, double standards and politicization. Nor could it be based on positions incompatible with the principles of sovereignty, equality, justice, the right to development and the peaceful settlement of disputes.

79. The consolidation of the rule of law at the international level required a truly democratic system in which all States could participate in the formulation of binding decisions. The appropriate forum for that process was the General Assembly, the main representative body of the United Nations. Urgent reform was needed in order to reverse the current state of affairs, in which the General Assembly engaged in lengthy discussions of non-binding recommendations. Most Member States had welcomed proposals for reform, including those contained in the report of the High-level Panel on Threats, Challenges and Change (A/59/565). Old entitlements should be replaced with a fair and equitable system. The competences of the General Assembly should be extended, and its resolutions should become binding. The powers and membership of the Security Council should be reviewed in order to ensure accountability and fair representation, in particular for the African continent, in accordance with the Ezulzwini consensus.

80. **Ms. Aitimova** (Kazakhstan) said that her Government would continue to seek to incorporate the most progressive international regulations into its legal system and to place the potential of international law at the service of the Kazakh people. Those priorities were being applied under a policy approved by the President in late 2009. Work would continue to be done to bring national legislation into line with accepted international standards with due regard for their correlation with domestic needs and historical traditions.

81. Kazakhstan had taken steps to promote the rule of law in terms of respect for human rights and freedoms, including by recognizing the competence of the Human Rights Committee. It had ratified over 400 universal conventions and protocols on major international issues and was working to bring its national legislation into line with them.

82. As a country comprising over 126 nationalities, Kazakhstan needed the rule of law and a strong legal system to maintain stability, promote understanding among the various ethnic groups and reduce the possibility of inter-ethnic strife.

83. **Mr. Chekkori** (Morocco) said his country's experience had shown that national efforts to achieve the rule of law benefited from ownership by States of their own reform programmes. The international community had several mechanisms for supporting Member States' work in that area, including by creating opportunities for dialogue with countries that were initiating reforms so as to understand precisely what they needed in terms of capacity-building, specifically of skills and competence, and to avoid duplication of efforts. Morocco expressed its full support for the work done by the Rule of Law Coordination and Resource Group, assisted by the Rule of Law Unit, to improve coordination in that area and considered that the two entities should be given the necessary resources to enable them to carry out those important activities.

84. Morocco had noted with satisfaction the statement in paragraph 89 of the Secretary-General's report that credible and legitimate national leadership was essential and was facilitated by relationships between national and international actors based on trust.

85. The Kingdom of Morocco had embarked on a course of action aimed at consolidating the rule of law, democracy, good governance and sustainable human development while fully respecting the fundamental principles of pluralism, tolerance and diversity, preserving territorial integrity and safeguarding the security of all Moroccan citizens. Moroccan courts had confirmed the primacy of international human rights law over domestic law in a number of judicial decisions. In line with its enduring concern to harmonize its legislation with the international conventions to which it was a party, the Kingdom of Morocco had promulgated a number of laws embodying the principles set out in such instruments.

86. Good governance and the consolidation of the rule of law were impossible unless citizens supported and were involved in the democratic process. One of the guiding principles of the reforms carried out by Morocco was "proximity", referring to the development of mechanisms and tools enabling the Government to meet the real needs of the population, ensuring more harmonious development and better distribution of resources. The objective of proximity obviously required a high degree of popular involvement in governance.

87. A major illustration of the concept of proximity was the National Initiative for Human Development, an action plan for promoting economic, social and cultural rights by placing the human being at the centre of development efforts. By empowering the poor, the vulnerable and those with specific needs, the Initiative would allow them to better assert their rights, thereby contributing to the rule of law.

88. His Government was also pursuing judicial reforms aimed at improving the courts' efficiency and moral integrity and at preserving the dignity and honour of judges and court officials. It was determined to continue modernizing judicial structures and providing them with the necessary human and financial resources to enable them to streamline their working procedures and enhance their performance.

89. **Mr. Eriksen** (Norway) said the incorporation of international norms into national legal systems depended on the constitutional system of each Member State, but the nature of that system was ultimately not decisive: what mattered was full and expeditious compliance by Member States, in their domestic legal order, with their international obligations. In Norway, international law was recognized by the domestic authorities and the courts under what was known as the principle of presumption. That principle safeguarded against any interpretation of national law that might run counter to a relevant international legal obligation, even if the international norm in question had not been transposed into Norwegian legislation. One example was the Norwegian criminal justice sector, where the relevant legislation was subject to such limitations as were derived from international agreements or international law in general.

90. Norway commended the Rule of Law Unit for the technical assistance it provided to Member States to help them meet their international obligations and develop legislation and practices for applying international law effectively. Insufficient capacity and institutional instability could undermine the implementation of treaties and enforcement of domestic legislation. Norway therefore strongly supported the work of the Office of Rule of Law and Security Institutions of the Department of Peacekeeping Operations.

91. In recent years Norway had increased its efforts to strengthen the protection of civilians, especially women and children, against the atrocities of war, with particular focus on sexual violence in connection with the conflict in the Democratic Republic of the Congo. Ending impunity by strengthening national and local judicial systems was a key to combating such crimes. Member States should establish and exercise jurisdiction over transnational criminal acts in order to ensure that suspects did not evade legal proceedings. When a Member State was unwilling or unable to initiate proceedings, there must be a safety net to ensure that justice prevailed. The ad hoc international criminal tribunals and the International Criminal Court were important steps forward in that regard. Recent experience underscored the importance of commissions of inquiry as legal tools to enhance respect for human rights and ensure accountability. In order to prevent conflict and combat impunity, such international mechanisms should be strengthened.

The meeting rose at 1 p.m.

United Nations A/C.6/65/SR.9

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Chairperson: Ms. Picco ..... (Monaco)

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Agenda item 85: The rule of law at the national and international levels (*continued*)

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10-57632 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 85: The rule of law at the national and international levels (*continued*) (A/65/318)

1. **Mr. Nickels** (United States of America) said that the rule of law was not only vital to maintaining peace and security, it was also instrumental in promoting trade and development, democracy, good governance and global health as well as protecting the environment, human rights and fundamental freedoms. It underpinned a multitude of daily transactions and interactions that took place around the world. A key to ensuring that nations assumed binding legal obligations under bilateral and multilateral treaties in order to achieve their collective goals was the effective implementation of those international obligations at the national level. Without effective implementation, treaty obligations were no more than words on paper and empty promises.

2. The United States was a strong proponent of respect for and adherence to the rule of law. Before it became party to a treaty, the Government — sometimes in consultation with the Congress and local and State authorities, private industry and civil society — reviewed the terms of the treaty to ensure that it could fulfil its obligations under that treaty. Private international law treaties that focused on the harmonization and unification of national laws relating to cross-border transactions frequently required such cooperation among authorities. It was also important to recognize that, often, the United States — like other countries — continued to fine-tune its implementation of treaties even after their entry into force.

3. The United Nations could play an important and constructive role in promoting the rule of law at the national and international levels as it worked to build domestic institutions and capacity. More than 40 of its entities were involved in rule of law activities in many countries around the world. His delegation supported efforts to coordinate such activities in order to maximize efficiency and avoid duplication.

4. **Mr. Manhiça** (Mozambique) said that his country welcomed United Nations efforts to enhance the rule of law at the national and international levels, which would facilitate the codification and progressive development of international law. The International Law Commission and the Sixth Committee played a key role in that respect. His delegation was pleased with the growing role of international institutions in ensuring that States upheld the rule of law, notably in the field of human rights and humanitarian law, and in combating impunity.

5. His country was in the process of strengthening its democratic framework and consolidating its legal institutions, both fundamental conditions for the promotion and respect of individual rights and freedoms and prerequisites for citizens to participate fully in nation-building and development. The Government had institutionalized an annual audit for the State budget in order to ensure more public accountability and curb corruption. It had also acceded to numerous international treaties, in particular those related to terrorism, money-laundering and human rights.

6. Leaders across the African continent subscribed to the importance of the rule of law, as evidenced by the African Union's New Partnership for Africa's Development, which addressed not only economic and social issues, but also matters related to accountability and good governance. Moreover, a growing number of countries were acceding to the African Peer Review Mechanism, a voluntary scheme aimed at ensuring good governance, more transparency, respect for human rights and compliance with legal obligations. Through that Mechanism, African countries could strengthen their democratic rule and governance structures by sharing and disseminating codes of best practices. As a prime believer in the virtues of the African Peer Review Mechanism, Mozambique had been among the first countries to subject itself to the scrutiny of its peers as part of that Mechanism.

7. **Mr. Park** Chull-joo (Republic of Korea) noted that the United Nations was involved in various projects for strengthening the rule of law in more than 125 countries. The Rule of Law Coordination and Resource Group and the Rule of Law Unit continued to be the convening mechanism not only for promoting the rule of law, but also for improving the coordination of United Nations rule of law assistance activities. Nonetheless, those activities remained a challenge, as they involved a myriad of actors and covered a wide array of endeavours, from law enforcement training and human rights protection to support for sustained economic development.

8. The Republic of Korea had adopted a monistic approach to the relationship between international law

and domestic law, as enshrined in article 6, paragraph 1, of its Constitution. Treaties concluded by the Government of the Republic of Korea as well as customary international law had the same status as domestic law, provided they were in compliance with the country's Constitution. In principle, once a treaty was concluded in accordance with the Constitution and promulgated pursuant to domestic legal procedure, it became part of domestic law without the need for special legislation. Only the Constitution took precedence over international law, as confirmed by the jurisdiction of the Constitutional Court, which had the judicial power to decide whether specific provisions of international law were consistent with the Constitution.

9. His delegation shared the view that more needed to be done to enhance international capacity for coordination among various stakeholders in order to improve the delivery of rule of law assistance. His delegation endorsed, in principle, the plan by the Rule of Law Coordination and Resource Group to support Member States in holding a high-level segment of the General Assembly on the rule of law.

10. **Mr. Badji** (Senegal) said that a just and effective international order based on the rule of law was essential, given the significant challenges posed by the promotion of peace, justice and sustainable development; the various crises with which the world was contending; and the myriad instances of non-compliance with international obligations. As the report of the Secretary-General (A/64/318) indicated, much remained to be done, notwithstanding the progress made thus far, to fortify effective multilateral cooperation based on the rule of law.

11. The success of efforts to promote the rule of law at the international level depended on strict compliance with generally accepted rules and principles, particularly those embodied in the Charter of the United Nations. Adherence to international law and the rule of law were inextricably linked, and frequent violations thereof and lack of political will to adhere thereto impeded the establishment of international relations based strictly on the principles of law. In that connection, fostering compliance with the rule of law constituted the core mission of the United Nations.

12. Given the cross-cutting nature of the issues and the diversity of actors involved, the coordination provided by the Rule of Law Coordination and Resource Group and the Rule of Law Unit was to be commended. The International Court of Justice played a particularly decisive role in that regard, through its work in promoting peaceful relations among States. It was also necessary to encourage mediation and strengthen mechanisms for managing the peace process, from preventive diplomacy to peacemaking to peacebuilding.

13. **Mr. Appreku** (Ghana), speaking in his national capacity, said that the Charter of the United Nations remained the foundation for the rule of law and must continue to guide and inform the behaviour and obligations of Member States. His delegation welcomed the joint assessment mission to his country, occurring at a time when Ghana was considering the desirability of acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The rule of law at the national and international levels would be strengthened by addressing challenges in conflict-ridden and post-conflict countries and supporting regional rule of law initiatives. Experience had shown that while regional organizations sought deeper cross-border integration as a necessary condition for accelerated development, the absence of values centred on the rule of law led to the disintegration of certain States, thereby destabilizing their neighbours and impeding regional integration efforts. In that regard, he welcomed the United Nations support for the West Africa Coast Initiative and the development of organized crime threat assessment exercises for host countries of United Nations peace operations.

14. The Ghanaian Constitution established the fundamental framework for the rule of law in Ghana. At the national level, it created independent bodies designed to enhance responsiveness, transparency and accountability in public life and provided for parliamentary oversight of the executive branch and the establishment of an independent judiciary. At the international level, it called for strict adherence to the principles and objectives of international organizations to which Ghana belonged, together with respect for the principles of international law and diplomacy in the conduct of Ghana's foreign relations.

15. In that connection, his country subscribed to the principles of the Charter of the United Nations as well as those of the founding treaties of the African Union and the Economic Community of West African States. It continued to support the African Peer Review Mechanism, which was designed to encourage the

highest standards in the rule of law at the national level. Ghana had incorporated into municipal law many international conventions covering a range of fields, including diplomatic immunity, law of the sea, counter-terrorism and international humanitarian law.

16. Despite the success of its democracy, Ghana had recently undertaken a constitutional review exercise to ensure that the rule of law continued to flourish in the country. The Rule of Law Resource Group, the Rule of Law Unit and other United Nations bodies were welcome to lend their support to that effort, and Ghana stood ever ready to support the rule of law activities outlined in the report of the Secretary-General (A/65/318).

17. **Mr. Gonzales** (Monaco) said that the United Nations, through the International Court of Justice, the International Law Commission and the United Nations Commission on International Trade Law, among other institutions, had contributed immensely to the development of case law and norms governing relations among States. It had played a major role in promotion of the rule of law at the international level; codification, development and application of an international legal framework; and establishment of international courts. Nonetheless, in order for the international rule of law to be strengthened, national laws must adhere to the principles promoted by the United Nations, including respect for human rights and fundamental freedoms. While the Secretary-General's report showed that the United Nations provided technical assistance to countries that wished to strengthen their rule of law, much more could still be achieved in the areas of organized crime, international corruption, transitional justice, property rights and sexual violence.

18. Considering the differences in interpretation of the concept of rule of law, his delegation encouraged the Secretary-General to take further action to identify obstacles to the domestication of international law in national systems and to take adequate action to overcome them. Lastly, Monaco supported the Secretary-General's proposal to convene a high-level meeting on the rule of law in 2011.

19. **Ms. Guo** Xiaomei (China) said that the rule of law at the international level consisted of two core elements: full and faithful implementation of the rules of international law and preservation of the overall interests of the international community. Discussion of laws and practices of Member States in implementing international law would help enhance mutual understanding, thus facilitating the national implementation of and compliance with international law. China took international treaties very seriously and fully honoured its treaty obligations. It had acceded to more than 300 multilateral treaties and concluded over 20,000 bilateral treaties; it had also adopted specific legislation to strengthen their implementation at the national level. In some instances, international treaties were directly applicable in China without the need for specific legislation.

20. China stood ready to increase exchanges with the United Nations and other Member States in an effort to uphold and improve the rule of law at the national and international levels.

21. **Mr. Tag-Eldin** (Egypt) said that enhancing respect for the rule of law was fundamental to maintaining international peace and security and promoting the effective protection of human rights and fundamental freedoms, economic growth and sustainable development. Achieving those goals at the national level required the support of the United Nations. To that end, the Organization should improve coordination among its different organs involved in the implementation of rule of law assistance programmes. It must develop a holistic approach in that regard, and also empower national Governments to follow their own vision, agenda and approach in implementing those programmes. In fact, experience in peacebuilding efforts had shown that the rule of law was strengthened when reforms adhered to the principles of inclusion, participation, transparency and national ownership.

22. The United Nations and its organs could credibly assume a leading role in promoting the rule of law only if they observed the letter and spirit of the Charter, international law and international humanitarian law. An effective multilateral system must be based on clear, transparent rules that applied to all players without selectivity, politicization and double standards. In that regard, it was important to establish clear criteria for Security Council action which went beyond those originally envisaged by the Charter. The consistent encroachment by the Security Council on the competence of the General Assembly and the Economic and Social Council, thus disregarding the delicate balance enshrined in the Charter, was a cause of serious concern, particularly as the Security Council in its current configuration and working methods was

incompatible with the principles of good governance at the international level. The Council should therefore be expanded and reformed as soon as possible.

23. **Ms. Naidoo** (South Africa) said that in order to be effective, international law must be implemented at the national level. Laws and practices of Member States not only gave effect to existing international law but also contributed to its development. The focus on national laws and practices in implementing international law was therefore of utmost importance. Accordingly, South African law gave prominence to the norms and standards of international law, thus ensuring that they played an important role in upholding and protecting the country's constitutional democracy.

24. Ghana's Constitution made provision for the incorporation of treaties into domestic law; it stipulated that customary international law was also the law of the Republic and required courts to consider international law when interpreting the Bill of Rights. Those courts had also relied on international law in reaching the conclusion that the death penalty was unconstitutional and that a proper balance should be struck between respect for human rights and the threat posed by terrorism.

25. **Ms. Millicay** (Argentina) said that strengthening of the rule of law was an essential condition for ensuring peace and security at both the national and the international levels. The interaction between the two levels was undeniable. The legislation and practice of States with regard to international law had a direct bearing on the effective application of international norms at the domestic level. Such legislation and practice could differ, depending on constitutional systems. In Argentina, which was a federal State, treaty law and customary international law were directly applicable in the domestic realm. Under the Argentine Constitution, treaties had pre-eminence over domestic laws, and some human rights treaties had constitutional standing and were understood to complement the rights and liberties recognized by the Constitution. Norms delegating competence and jurisdiction to supranational organizations under regional integration treaties also took precedence over domestic laws.

26. Compliance with international law was not limited to the domestic practice or legislation of States, however. As noted in the report of the Secretary-General, it also encompassed capacity-building, the fight against impunity and the peaceful settlement of disputes. Capacity-building was especially important in conflict and post-conflict situations, and priority should therefore be given in United Nations mandates to developing capacity to ensure the rule of law, in particular through the strengthening of domestic judicial and police systems. The commitment of Member States to such activities, through their participation in United Nations missions and in regional and bilateral initiatives, was essential.

27. The establishment of the International Criminal Court in 1998 had been a landmark achievement and, 10 years on, the Court was now playing a central role in the fight against impunity. However, in order to end impunity definitively, domestic investigation and judicial systems also had to be strengthened. Perpetrators of serious violations of human rights must be brought to justice. Fortunately, the international community had moved beyond the "justice versus peace" paradigm, in which justice often fell victim to de jure or de facto amnesties in conflict and post-conflict situations. Justice and peace were now seen as objectives that were not only compatible but complementary.

28. The International Court of Justice, the main judicial organ of the United Nations, and specialized tribunals, such as the International Tribunal for the Law of the Sea, played an important role in the settlement of international disputes, but there were other means envisaged in the Charter of the United Nations. When called upon to do so by an organ of the United Nations, including the General Assembly, the parties to a dispute had a responsibility to negotiate in good faith with a view to resolving the matter peacefully. They also had an obligation to act in good faith in order to ensure the success of good offices missions led by the Secretary-General or other United Nations officials. At the same time, States that were not parties to a dispute had a responsibility to refrain from taking actions that might hinder the parties from fulfilling their obligation to settle the dispute peacefully.

29. Regional cooperation and coordination through mechanisms such as the Southern Common Market and the Union of South American Nations were important for strengthening the rule of law and maintaining democratic order. The latter organization had unequivocally condemned the recent attempted coup d'état in Ecuador, and her Government seconded that

condemnation and affirmed its commitment to the preservation of democratic institutions, the rule of law, the constitutional order, social peace and full respect for human rights.

30. **Ms. Tupa** (Democratic Republic of the Congo), noting that the United Nations Millennium Declaration had affirmed the importance of the rule of law as a critical requirement for promoting security and prosperity, said that her country's laws and practices with respect to the implementation of international law were grounded in the monistic tradition and, consequently, the rules of international law need not be translated into domestic law, but could be applied directly by the judicial system. International law could thus penetrate into the daily lives of the people.

31. Respect for the rule of law and human rights could not prevail in a society in which the perpetrators of crimes were not held to account. The rule of law required the sound administration of justice to prevent impunity, which in post-conflict countries such as hers was essential in order to consolidate and preserve a lasting peace. The current state of positive law in her country made it difficult to prosecute new forms of crime that had emerged as a result of political conflict, including rape and other sexual violence used as weapons of war. Such crimes — like genocide, war crimes and crimes against humanity — fell under the jurisdiction of the military courts.

32. Nevertheless, several initiatives had been taken at the national level, despite the severely weakened state of the judicial system, to prevent and punish crimes of sexual violence and provide support for victims. The Sexual Violence Act, adopted in August 2006, had amended the Criminal Code, incorporating the rules of international humanitarian law relating to crimes of sexual violence and addressing the need to protect the population groups that were most vulnerable to such crimes. At the same time, the military courts were taking steps to deal with the issue, as evidenced by several recent verdicts, including the conviction and sentencing to life imprisonment of a group of soldiers for mass rape and crimes against humanity in the Songo-Mboyo trial. In that case, the court had directly invoked the Rome Statute of the International Criminal Court, finding that rape committed systematically on a mass scale against a civilian population constituted a crime against humanity.

33. While the national courts were certainly playing an important role in restoring the rule of law, a successful transition from war to peace could not occur without a mechanism capable of providing a sense of justice to all citizens, establishing or restoring public confidence, fulfilling the duty to remember and reconciling people and communities. In that context, the ongoing process of reform of her country's judicial system merited attention and support in international forums. Her Government remained determined to establish and maintain a justice system that was fair, responsible, ethical and efficient, in accordance with the principles of international law and the Charter of the United Nations. It had an ambitious national action plan for the promotion and protection of human rights, but implementing it would require technical and financial assistance and international cooperation. Her delegation therefore welcomed the work of the Rule of Law Unit and the Rule of Law Coordination and Resource Group. The latter should be equipped with the means to provide assistance for investigations and for the rapid identification, collection and preservation of information to assist in bringing to justice the perpetrators of serious crimes in post-conflict countries.

34. **Mr. Kohona** (Sri Lanka) said that strengthening the rule of law would help to contain discord, maintain peace, resolve disputes, promote development and enhance the quality of human existence. However, the concept must be understood in the context of the rich and differing values of Member States and groups of States within the international community. The principle of sovereign equality was a crucial pillar of the international rule of law and was enshrined in the Charter of the United Nations, and it must be respected as international rules were made and implemented. Any tendency to prescribe solutions to internal circumstances on the basis of experience elsewhere or of theoretical generalizations must be avoided. One size did not fit all.

35. The United Nations could and should do more to identify commonalities and ensure central coordination. It could provide leadership in capacity-building in post-conflict countries and in developing national legal frameworks, incorporating, as appropriate, international norms and standards. More coordination and cooperation between the various United Nations entities was essential in order to avoid duplication and waste of resources and to produce the

best results. The Rule of Law Unit should be strengthened in order to enable it to address a range of global challenges, including the promotion of democracy, human rights, sustainable development and peaceful co-existence and cooperation.

36. An important aspect of the rule of law at the international level was the fulfilment by States at the national level of their obligations under treaties and other international agreements. The United Nations could play a crucial role in capacity-building to enable States to meet those obligations. Sri Lanka was committed to complying with the treaties to which it was a party, and his Government made every effort to give domestic effect to international obligations. It had also always advocated the settlement of internal and international disputes by peaceful means. Even in the case of the Liberation Tigers of Tamil Eelam, a brutal terrorist group that had challenged the very existence of the State, his Government had sought to end the conflict through negotiations. Sri Lanka was committed to protecting the rights of all its people and enabling them to realize their dreams, and it stood ready to join other Member States in improving the rule of law at the national and international levels under the umbrella of the United Nations.

37. **Mr. Delgado Sánchez** (Cuba) said that his Government fully supported the constitutional Government of Rafael Correa, President of Ecuador, and condemned the attempted coup d'état against him, which had seriously threatened the institutional system and the rule of law in Ecuador. His Government also supported the efforts to prosecute those responsible.

38. States' fulfilment of their obligations under international treaties was essential to the rule of law at all levels. States should adapt their domestic legislation in order to comply with those obligations and should refrain from violating the letter of treaties to which they were parties. Promotion and strengthening of the rule of law at the national level should begin with recognition of the sovereign right of peoples to create legal and democratic institutions in line with their socio-political and cultural interests. The international community could not supplant or replace national authorities. Instead, it should work to strengthen national legal systems, but only at the request of the State concerned, without any political conditions and with due respect for the State's institutions and right to self-determination.

39. His delegation remained concerned about the unilateral exercise of extraterritorial civil and criminal jurisdiction by national courts when it did not emanate from international treaties or other obligations under international law. Such actions were politically motivated. His delegation also noted with concern that the national courts of some developed countries were increasingly and selectively seeking to judge matters that fell outside their jurisdiction. Those same States failed to recognize the compulsory nature of international law when they tried to justify plundering the riches of developing countries. Cuba condemned the enactment of national laws and the adoption of unilateral measures against other States and called for the immediate lifting of the economic, commercial and financial embargo imposed against it for more than 50 years.

40. **Mr. Alsubaie** (Kuwait) said that the recommendations contained in the Secretary-General's report were of the utmost importance for ensuring not only international peace and security but also justice and equality. Similarly, respect for the Charter of the United Nations and for international law was essential when confronting the challenges and threats facing the international community, as was the obligation to protect various rights and freedoms. Under his country's constitutional democracy, the rights and duties of citizens were guaranteed, as was respect for the rule of law by virtue of the separation of the three branches of government. Kuwait was one of the world's leading countries in terms of education, health care and the promotion of rights and freedoms. Moreover, its economic development plan for the following four years provided for a substantial investment in agriculture and infrastructure.

41. At the international level, Kuwait complied with the principles, laws and treaties that together promoted the rule of law through, for instance, non-interference in the affairs of other States and the peaceful settlement of disputes. The Arab-Israeli conflict was the greatest threat to peace and security in the region. Because the United Nations had been unable to find a solution, Israel felt free to flout international law. For example, settlement construction had continued, as had the blockade on Gaza, the demolition and Judaization of Jerusalem, the expropriation of land and the oppression of Palestinians. On 31 May 2010, Israel had raided an aid flotilla in international waters in the belief that it would not be held accountable.

42. Kuwait reiterated its support for the establishment of a Palestinian State with Jerusalem as its capital. The occupied Syrian Golan should be returned to the Syrian Arab Republic. Israel must desist from its repeated violations of Lebanese sovereignty, which violated Security Council resolution 1701 (2006), and withdraw from all occupied Lebanese territory.

43. More efforts were needed to promote respect for the rule of law at the international level, without selectivity. To that end, it was essential to find solutions to conflicts arising between principles of international and domestic law; to strengthen international dispute resolution mechanisms; to propose means of coordination with a view to avoiding conflict between international conventions at the international and regional levels; and to identify ways of raising awareness of international conventions and ensuring their implementation.

44. **Mr. Ayoob** (Afghanistan) said his delegation welcomed the dialogue with Member States recently initiated by the Rule of Law Coordination and Resource Group and the Rule of Law Unit and their efforts to ensure the overall coherence of United Nations efforts towards capacity-building in post-conflict countries. Member States should be kept abreast of United Nations activities that fostered the rule of law at the international and national levels.

45. Two decades of armed conflict and violence had destroyed or reduced the capacity of Afghanistan's governmental institutions, including in the rule of law and justice sectors. Since the adoption of the Constitution in 2001, however, the country had come a long way in consolidating the rule of law. With the support of the international community, the Government had taken steps to develop the human and institutional capacity of the justice sector; increase access to justice for all, especially women; improve governance; fight corruption; and strengthen its security forces.

46. Building on the commitments made at the 2010 International Conference on Afghanistan, his Government was taking additional steps to enhance the rule of law, including better provision of legal aid services, regulatory support for a major crimes task force and an anti-corruption tribunal and the initiation of a strategy for long-term electoral reform.

47. While expressing gratitude to the international community, non-governmental organizations and all who were committed to alleviating the plight of the Afghan people and ushering in a world where justice could prevail, he called for those partners to sustain and coordinate their support and assistance to Afghanistan.

48. **Mr. Thang** (Myanmar) said that in enacting its domestic legislation, Myanmar generally followed the international norms and standards of State practice that were consistent with international law and observed the principles set forth in the 1969 Vienna Convention on the Law of Treaties. Its Ministry of Foreign Affairs collected legal opinions on the strong and weak points of draft legislation. After political approval at the highest level, laws were not promulgated officially until they had been carefully analysed by a team of legal experts.

49. The rule of law at the national level was part of an unbroken chain through to the international level, the only difference being the scale of jurisdiction. Ever since the adoption of the Charter of the United Nations, Myanmar had been exercising the principles enshrined therein and stood ready to respond to the latest events shaping the landscape of international law.

50. **Mr. Luvanda** (United Republic of Tanzania) reaffirmed his country's dedication to domestic efforts to strengthen democratic institutions, improve access to justice, promote the rule of law and good governance and fight corruption. International treaties had to be incorporated into domestic legislation either through amendment of existing laws or enactment of new ones. His country was a party to the Vienna Convention on the Law of Treaties and its courts interpreted treaties in accordance with articles 31 to 33 of that instrument, facilitating the necessary interface between domestic legislation and international law, including recourse to remedies.

51. With regard to the rule of law at the national level, he expressed particular gratitude for United Nations technical assistance in the enactment of a comprehensive child law, which incorporated the provisions of the United Nations Convention on the Rights of the Child into Tanzanian law.

52. The Secretary-General's report pointed to a number of critical challenges, including restoration of the rule of law in post-conflict situations and the threats posed by organized crime, corruption and drug

trafficking. The United Nations was making commendable efforts to generate sustained and coherent approaches to those challenges, but his Government advocated more collective efforts towards achieving a world free from such global vices.

53. His country was engaging with regional partners to advance the rule of law and good governance. It fulfilled its international treaty obligations, among which were the upcoming consideration by the Human Rights Council of its universal periodic review, for which his Government hoped for technical assistance.

54. **Mr. Ulibarri** (Costa Rica) said that an international order based on the rule of law should encompass binding and non-binding norms; mechanisms for monitoring their application; conflict resolution institutions; and practical tools for averting impunity. The United Nations must be particularly vigilant about the legal framework in which it and its institutions, especially the Security Council, operated. The establishment of an Ombudsperson, in accordance with Security Council resolution 1904 (2009), to assist in considering delisting requests addressed to the Security Council Committee established pursuant to resolution 1267 (1999) was a positive development that should be applied to all sanctions regimes.

55. His delegation welcomed the fact that human beings were emerging both as protagonists and subjects in the international landscape of the rule of law, particularly in the field of human rights. It was encouraging to see that international criminal jurisdiction was now being applied to the actual perpetrators of the worst violations of international law, thanks to the United Nations, the ad hoc tribunals for Rwanda and the former Yugoslavia and, in particular, the International Criminal Court. The accused must not be allowed to evade justice.

56. At the national level, the development of the rule of law was essential for promoting the population's well-being and for national reconstruction in post-conflict countries and regions. A democratic political system, respect for human rights and establishment of the rule of law were not isolated phenomena. The better they were realized as a whole, the better were the opportunities for fighting poverty, promoting sustainable development, peacefully resolving conflicts and ensuring world peace. Democracy must not be regarded merely as the periodic holding of free and fair elections: it also implied freedom of association, expression and petition; legal safeguards; independence of the judiciary from the political branch; accountability and transparency; and respect for minorities.

57. **Mr. Adi** (Syrian Arab Republic) said that the current discussion was extremely important, coinciding as it did with the need to emphasize the principles and purposes of the United Nations insofar as the Security Council continued to encroach upon the mandate of the General Assembly, thereby diminishing the rule of law at the international level and impairing the mechanisms for application of the Charter. The General Assembly had emphasized the need for observance of the rule of law at both the international and the national levels, given the alarming proliferation of acts involving the use or threat of use of force, the occupation of sovereign States or their territories, and such other newly contrived concepts as pre-emptive war, relative sovereignty, responsibility for protection and the linkage of security, development and democracy with human rights. In that regard, unilateral measures had an adverse impact on the rule of law at the international level and on international relations.

58. All States were bound to respect and apply the principles of international law without selectivity. The sovereignty and independence of States were also to be respected, together with the right of peoples under occupation to fight for self-determination, independence and liberation. Further principles supported by his country were the settlement of disputes by peaceful means, non-interference in the internal affairs of States and respect for the equal rights of all, without distinction.

59. In the field of international relations, the rule of law was still far from established, owing to continuing exceptions to the rule, double standards and imposition of the will of the strong on the weak, which stemmed from the lack of effective deterrents and failure to treat States equally. The rule of law at the national level assumed a variety of forms as a function of the unique political, historical and cultural features characterizing individual States. Methods for the provision of technical and financial assistance should be developed with those features in mind and not turned into a tool for political pressure or a pretext for interfering in the affairs of States or diminishing their sovereignty. The rule of law was furthermore intertwined with human rights and democracy. Each of those elements should therefore be applied and strengthened in a balanced

manner, and each State should fulfil its obligations to promote and protect all human rights and fundamental freedoms.

60. **Ms. Valenzuela Díaz** (El Salvador) said that a State governed by a given legal order was not necessarily living under the rule of law. The latter was not a descriptive category, but rather an ethical principle. The concept of rule of law might entail the primacy of the law, responsibility of civil servants, judicial monitoring of constitutionality and promotion of fundamental rights.

61. Such elements were fully in place in El Salvador. The Constitution provided that the State was responsible for developing and defending the law, democratic institutions and the independence and cooperation of the three branches of power. Her country was committed to the peaceful settlement of disputes, primacy of international law, unrestricted promotion and defence of human rights, and compliance with international obligations in accordance with the Charter.

62. Article 144 of the Constitution provided that international instruments concluded between El Salvador and other States constituted laws of the Republic on entry into force. National legislation could not modify or rescind such instruments, which took precedence in the event of any conflict. The Supreme Court had upheld the binding nature of international legal instruments, which depended not only on ratification but on the pre-existing legal principle of *pacta sunt servanda*.

63. **Mr. Wada** (Japan) said that the rule of law was essential for the maintenance of peace and stability. His delegation supported the Rule of Law Coordination and Resource Group and the Rule of Law Unit and looked forward to further coordination efforts in order to avoid duplication and create effective synergies. Japan also attached great importance to the role of international courts in strengthening the rule of law at the international level: it had accepted the compulsory jurisdiction of the International Court of Justice and had contributed judges to the Court and to the International Tribunal on the Law of the Sea. Furthermore, it was the largest contributor to the budget of the International Criminal Court and continually sought to strengthen its support for the Court's human resources.

64. At the first Review Conference of the Rome Statute, the parties had adopted a definition of the crime of aggression. They should continue their efforts in order overcome the inherent ambiguities of that text; by its very nature, international criminal justice required a rigorous approach. Japan was ready to share its experience with any country considering accession to the Rome Statute.

65. Regional frameworks played an important role in promoting the rule of law at the international level, one example being the African-Asian Legal Consultative Organization, the activities of which Japan had always keenly supported. In addition to providing technical assistance for the establishment of the rule of law in the developing countries of South-East Asia in particular, Japan contributed to the valuable work of the United Nations Audiovisual Library of International Law.

66. **Mr. Şahinol** (Turkey) said that in order to uphold the rule of law, States must comply with the principles enshrined in the Charter, multilateral treaties and international law. The rule of law was connected with the responsibility of every State to uphold human rights and fundamental freedoms. Its exercise facilitated trade, development, democracy, good governance and the protection of the environment. However, its components should be more clearly defined on the basis of the Charter, the *pacta sunt servanda* principle and the Vienna Convention on the Law of Treaties (1969).

67. The United Nations could promote the effective implementation of international treaties through capacity-building, particularly in the case of developing States. Any inconsistency between domestic and international levels should be eliminated. Strengthening the rule of law at the international levels was also important in order to tackle climate change, terrorism and trafficking in weapons and drugs. The absence of a comprehensive convention on international terrorism therefore had repercussions for the rule of law. In order to ensure that the perpetrators of such crimes could find no safe haven, Member States must honour international extradition treaties.

68. **Mr. Stuerchler** (Switzerland) said that it was crucial for States to verify the compatibility of national legislation, and in particular draft laws, with international law. Switzerland did so through decentralized administrative monitoring. The relevant

ministries, particularly the Ministries of Justice and Foreign Affairs, systematically and automatically reviewed the compliance of all draft laws with international law, giving their opinion in the course of parliamentary debates. Preventive monitoring took place at various stages in the legislative process and acted as a reminder of the boundaries that must be observed. The system had several advantages, including transparency, coordination, specialist support, flexibility and pragmatism.

69. However, such mechanisms were not enough; the rule of law was a continuous process of calling into question accepted practice. It could conflict with other legitimate values, such as democracy: a majority could vote for a law that conflicted with international law. Switzerland was aware of such complexities, and continued to debate the extent to which popular initiatives ought to be limited by the Constitution.

70. His delegation commended the Rule of Law Coordination and Resource Group and the Rule of Law Unit and supported the idea of convening a high-level meeting of the General Assembly on the rule of law.

71. **Ms. Adams** (United Kingdom) said that her country was the only Member State actively engaged with all six international criminal tribunals. Her delegation therefore welcomed the arrest in France on 11 October 2010 of Callixte Mbarushimana on charges of war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo. The United Kingdom called on all States to cooperate fully with the tribunals, in particular where they were under an obligation to do so.

72. The current economic climate posed particular challenges for the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia, all of which relied on voluntary contributions. Her delegation urged donor countries to maintain their contributions to the extent possible. At the same time, it expected all of the tribunals to exercise restraint in their budgetary demands and to endeavour to make the most efficient and effective use of resources.

73. Some of the international criminal tribunals were approaching the end of their mandates. It was important to preserve their legacy by establishing mechanisms to carry out essential residual functions, such as the prosecution of fugitive indictees, protection of witnesses and preservation of archives. The United Kingdom would continue to support those ongoing tasks and would work towards the adoption in 2010 of a Security Council resolution establishing a residual mechanism for the international tribunals for the former Yugoslavia and Rwanda. The Special Tribunal for Lebanon, which was expected to issue its first indictment in the near future, was intended to end impunity for political assassinations in that country. The United Kingdom called on all States to recognize its independence and impartiality.

74. The first Review Conference of the Rome Statute had reaffirmed the principle of complementarity in the global fight against impunity. Her delegation called on all Member States that had not yet done so to ratify or accede to the Rome Statute. All States parties should take immediate steps to incorporate the Statute in their domestic legal systems. Her country was prepared to support such efforts.

75. The report of the Secretary-General rightly emphasized the role of the International Court of Justice in addressing disputes between States and delivering advisory opinions. Her delegation urged all States to accept the compulsory jurisdiction of the Court.

76. **Ms. Lalić Smajević** (Serbia) said that her delegation thanked the Secretary-General for his report, but would have liked it to have been issued earlier. Section II B, and in particular paragraph 25, referred to the advisory opinion of the International Court of Justice concerning the unilateral declaration of independence in respect of Kosovo. In view of the length of the advisory opinion, a single sentence on the topic was clearly insufficient for a report submitted to the Sixth Committee. Such a brief mention unduly simplified the advisory opinion, presenting it outside its intended context. Simplifications of an issue of such sensitivity and complexity could be counterproductive and misleading. Certain additional comments and precise quotations of the advisory opinion would be needed.

77. In paragraph 51, the advisory opinion took a narrow and specific approach to the question posed by the General Assembly. The Court had underlined that its advisory opinion did not address the legal consequences of the unilateral declaration of independence or the validity or legal effects of the recognition of Kosovo by third States. Within that scope, the Court had considered that general

international law contained no applicable prohibition of declarations of independence and had concluded that the declaration had not violated general international law.

78. Moreover, paragraph 56 specified that the Court had not been required to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori, on whether international law generally conferred an entitlement on entities situated within a State unilaterally to break away from it. Indeed, it was entirely possible for an act not to be in violation of international law without necessarily constituting the exercise of a right conferred by it.

79. The Court had reaffirmed that Security Council resolution 1244 (1999) and the Constitutional Framework remained in force. The province of Kosovo therefore remained a territory subject to an international regime, and its final status was undetermined. The political process designed to determine its future status, as envisaged in Security Council resolution 1244 (1999), paragraph 11 (e), had not yet run its course.

80. **Mr. Valero Briceño** (Bolivarian Republic of Venezuela) said that his country was steadily harmonizing its domestic legislation with the international instruments to which it was a party. International human rights instruments had equal authority with the Constitution. Where their provisions were more favourable, they took precedence over national legislation. National referendums were used to take decisions on the adoption of international agreements which might compromise national sovereignty or which provided for the transfer of competences to supranational bodies. The Constitution had been prepared by a constituent assembly through a referendum, in an unprecedented consultation with the people. Parliament was currently debating reforms to the Penal Code in order to update it and harmonize the various sources of criminal law.

81. In the absence of a democratic regime within the Organization, the attainment of an international system governed by the rule of law continued to be a utopian goal. Only by democratizing and rebuilding the United Nations could international law be applied equitably and transparently. For that purpose, it was essential to uphold the legal equality of States; their sovereignty, political independence and territorial integrity; and their right to use and administer their own natural resources. Disputes must be settled peacefully, without the use or threat of use of force.

82. Regional instruments also had a valuable role in strengthening the rule of law. In October 2010, the Heads of State of the Union of South American Nations had reaffirmed their firm commitment to the preservation of democratic institutions, the rule of law, constitutional order, social peace and unconditional respect for human rights. At the forthcoming summit, the Union would adopt a democratic clause in response to the failed coup in Ecuador.

83. His country condemned the abduction and attempted murder of President Rafael Correa of Ecuador, which had been aimed at resurrecting a historical phase that belonged to the past. The unity and integration of Latin America, together with the rise of new progressive, revolutionary, democratic and socialist forces, were signs of a new era of justice and solidarity.

84. **Ms. Schonmann** (Israel), speaking in exercise of the right of reply, said that it was unfortunate, if unsurprising, that the representative of Kuwait had chosen to taint the important current debate with an outburst of unfounded, politicized allegations that had no place in the work of the Committee. Out of respect for that work, she had no intention of responding in substance. However, she wished to remind the representative of Kuwait that people who lived in glass houses should not throw stones. She urged all delegations to show a professional spirit in accordance with the established practice of the Committee.

85. **Mr. Alsubaie** (Kuwait), speaking in exercise of the right of reply, said that his delegation stood by its remarks. Israel's policies defied international law, international humanitarian law and the Charter of the United Nations on a daily basis. The Arab Peace Initiative had been intended to bring an end to the conflict. However, Israel's decision not to extend the moratorium on settlement activities would strike a lethal blow to the peace process. It was unacceptable that Israel continued to inflict the worst forms of collective punishment on the Palestinian people. His delegation called on the international community to hold Israel accountable for its inhuman activities.

The meeting rose at 6.05 p.m.

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Chairperson: Ms. Picco ..... (Monaco)

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for actions taken during their term of office; several other cases against senior Government officials had been thrown out by the International Criminal Court for just that reason.

15. The warrant for President Al-Bashir's arrest was clearly part of a political strategy designed to put pressure on the Sudan and lacked legal grounds. Furthermore, the prosecutor's decision to pursue a charge of joint criminal enterprise set a dangerous precedent within international law and would lead to a loss of confidence in international justice. Indeed, the case brought against the President of the Sudan could be seen as the first of many in which some Western Powers would seek to violate the sovereignty of developing countries in the name of human rights. The African Union had concurred with the Sudan on that point by rejecting cooperation with the International Criminal Court.

16. Reform of the organs of the United Nations was critical to enable it to address new challenges confidently. Security Council reform was needed to improve transparency and democratic accountability but also to put an end to the continued encroachment by the Council on the functions and powers of the General Assembly and the Economic and Social Council. The rule of law at the international level must be in harmony with national laws; to that end, the provision of technical and capacity-building assistance to Member States urgently needed to be strengthened. Lastly, he welcomed the Organization's new administration of justice system and expressed the hope that its shortcomings might be addressed in the near future.

17. **Mr. Sharifov** (Azerbaijan) said that Azerbaijan was a party to all major international conventions, which, under its Constitution, automatically became part of domestic law. In the event of a conflict between domestic legislation and the provisions of a convention to which his country was a party, the latter took precedence. Promotion of the rule of law was a priority for his Government, which affirmed its commitment to an international order based on international law and the rule of law and supported the progressive development and codification of international law and standards.

18. Adherence to the rule of law was essential to the maintenance of international peace and security and the achievement of economic development and social progress. His delegation strongly supported the rule of law activities of the United Nations, especially the Rule of Law Coordination and Resource Group, and favoured the idea of convening a high-level meeting of the General Assembly on the rule of law.

19. Violations of international law were still too frequent and the political will to ensure consistent compliance too weak. Threats to the territorial integrity of States, including unlawful occupation and use of force by some States against others, continued to occur in violation of both international law and the obligations of Member States under the Charter. Existing mechanisms for monitoring and promoting compliance with international obligations needed to be made more effective. Security Council and General Assembly resolutions should be implemented without selectivity, and more should be done to address the major threats and challenges that undermined the international legal order and, in addition, generated a disregard for human rights. Impunity should never be allowed to prevail. Those responsible for breaches of international humanitarian law or international human rights law must be brought to justice.

20. **Mr. Charles** (Trinidad and Tobago) said that his delegation aligned itself with the statement made on behalf of the Rio Group. The promotion of the rule of law and agreement on a body of legally binding rules were indispensable to the achievement of lasting peace and security, good global governance and economic development. Without agreement on rules governing international conduct, small and vulnerable States would not enjoy sovereign equality with larger and more powerful ones.

21. Many States relied on United Nations assistance in the drafting of domestic legislation aimed at implementing international legal obligations, and in the training of their officials in diverse areas of international law. The Treaty Section of the Office of Legal Affairs and the United Nations Institute for Training and Research (UNITAR) did invaluable work in that regard. It was important for the United Nations Rule of Law Resource and Coordination Group and its supporting entities to be provided with adequate resources in order to fulfil their mandate. Trinidad and Tobago continued to make annual contributions to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which exposed officials and experts from Member States to the role of

international law in the maintenance of global peace and security.

22. International regulation was required for certain activities, making the establishment of the Arms Trade Treaty Preparatory Committee an important step towards preventing the diversion of conventional weapons to the illicit market. That activity caused increased criminal activity across borders and undermined the rule of law, as the perpetrators had no respect for the rule of law and were not always brought to justice in the absence of extradition treaties. Cooperation at the international level was required to rectify that.

23. A complementary feature of the rule of law was the promotion of justice at both the national and the international levels. The International Criminal Court was a beacon for victims of crime and impunity and complemented national criminal justice systems in bringing to justice criminals accused of violating international human rights and humanitarian law.

24. The primary responsibility in promoting the rule of law remained with Member States. The rule of law was an important pillar of democracy in Trinidad and Tobago, where many of the State's obligations under international conventions had been domesticated. The rule of law had also come to be seen as a means of facilitating access to the living and non-living resources of the State's exclusive economic zone and continental shelf. Trinidad and Tobago had concluded maritime boundary agreements based on the rules established under the United Nations Convention on the Law of the Sea and accepted the International Tribunal for the Law of the Sea as the body for settling disputes arising in connection with the Convention.

25. **Mr. Al Habib** (Islamic Republic of Iran) said that only through respect for the rule of law and justice could a secure, peaceful and prosperous world be realized and maintained. With respect to the report of the Secretary-General (A/65/318) and overall United Nations policies concerning the rule of law, his Government believed that those should be shaped in accordance with the principles enshrined in the Charter of the United Nations and relevant authoritative documents. It was also important to maintain a balanced and inclusive approach to the issue.

26. It was the sovereign right of each nation, protected by international law and the Charter, to establish its own model of the rule of law and to develop a legal and judicial system based on its cultural, historical and political traditions and needs. The international community and the United Nations could provide technical assistance at the request of Member States based on the needs and priorities they themselves identified.

27. One whole chapter of the Constitution of the Islamic Republic of Iran concerned the rights of the people and citizens, guaranteeing equal rights regardless of colour, race or language and equal protection of the law for both men and women in conformity with Islamic criteria.

28. Concerning the incorporation of international obligations in the domestic legal system, Iranian civil law clearly stipulated that the provisions of international agreements concluded between the Islamic Republic of Iran and other countries in accordance with the Constitution had the force of law. A procedure for ratification of, or accession to, an international treaty was specified in the Constitution.

29. The rule of law was not immune from misuse and abuse. National legislation that manifestly contravened the norms and principles of international law and violated the rights of other States devalued the concept of the rule of law. Unilateral and extraterritorial application of domestic law against other countries adversely affected it as well. Selectivity and double standards in international law must be rejected, since they undermined the very nature and objective of the rule of law.

30. The rule of law stood at the core of the United Nations, and the purposes and principles of the Charter could be fulfilled only in a law-based international order where all States were committed to refraining from the unlawful use or threat of force. The United Nations had been established mainly to save succeeding generations from the scourge of war, which had to be achieved by replacing the rule of force and power with the rule of law and justice.

31. The United Nations had a unique role in strengthening the rule of law, as it provided a key global platform for all States to engage in codification and progressive development of international law through multilateral diplomacy and negotiations. Equal opportunity for all sovereign States to participate was fundamental for the credibility and legitimacy of the outcomes of those negotiations. Host countries of the various United Nations headquarters had an obligation

to facilitate the presence of the representatives of Member States at United Nations meetings. It was a matter of serious concern that, in some cases, the representatives of Member States had been prevented by the host country authorities from participating in United Nations meetings because of political considerations.

32. He welcomed the new administration of justice system at the United Nations and expressed support for initiatives aimed at ensuring criminal accountability of United Nations officials and experts on mission. The Organization's staff needed to have access to an effective and fair system of internal justice and should be held accountable for any misconduct or criminal act committed.

33. The General Assembly's role in the progressive development and codification of international law needed to be fully respected by other United Nations organs, particularly the Security Council. The Security Council had a primary responsibility for maintaining international peace and security while exercising its powers in accordance with the purposes and principles of the Charter and refraining from interfering in the internal affairs of Member States. Decisions made on the basis of unauthentic information, politically motivated analysis or the narrow national interest priorities of some of its permanent members could undermine the Council's credibility and reputation.

34. **Mr. Ben Lagha** (Tunisia) said that although it was useful for the purposes of the Committee's current debate to draw a distinction between the rule of law at the national and international levels, in fact the two levels could not be dissociated from one another. The principle of the rule of law was enshrined in his country's Constitution: the provisions of international treaties to which Tunisia was a party became a source of binding law at the national level and had pre-eminence over domestic laws. Judges were obliged to uphold the law established under international conventions by invoking it directly in domestic courts. Tunisia had become a party to more than 16 international instruments in the previous three years, including, most recently, the Convention on Cluster Munitions and the International Convention for the Suppression of Acts of Nuclear Terrorism.

35. The gaps between the existence of international norms and their effective implementation at the national level and between the existence of a comprehensive international legal framework and low adherence by States to the relevant treaties had to do in some cases with lack of resources, but in others it was the result of insufficient political will or a selective approach to implementation. Strengthening the rule of law required respect for the international obligations and adherence to the standards established in those areas, without exception or distinction. All Member States should therefore respect the resolutions of the Security Council, many of which continued to go unheeded.

36. His delegation supported the efforts of the Rule of Law Unit and the Rule of Law Coordination and Resource Group to maintain an ongoing dialogue among Member States aimed at strengthening the rule of law at the national and international levels; it also endorsed the idea of organizing a high-level meeting of the General Assembly on the topic.

37. **Ms. Haile** (Eritrea) said that clear rules, adherence to those rules and an effective multilateral system to prevent or sanction violations were preconditions for lasting international peace and security. Strengthening the rule of law at all levels would help to prevent the arbitrary exercise of government power in international relations among States. The General Assembly should play a leading role in that regard. However, the international community should not replace national authorities or seek to usurp their primary role in establishing and strengthening the rule of law. The United Nations had an important role to play in ensuring that all Member States were subject to the same standards and that such standards were not applied in a selective or arbitrary manner.

38. Her Government attached great importance to the promotion of peaceful settlement of disputes and was of the view that strengthening the rule of law would also bolster economic and social development and government accountability at the international and national levels.

39. **Mr. Olukanni** (Nigeria) welcomed the Secretary-General's report (A/65/318), noting that the rule of law activities mentioned therein covered all the regions of the world. Since the return of the rule of law to Nigeria a decade earlier, his country had striven to maintain and further develop democracy. A justice system was a complex, interlocking system of various institutions; effective reform of any one part required

reform of all the other parts also. His Government had conducted reforms of its judiciary and legislative branches and had recently enacted bills on criminal justice and administration aimed at consolidating criminal procedure laws, reducing administrative delays and providing for more humane treatment of prisoners. The Constitution of Nigeria was recognized as playing a key role in the implementation of the rule of law, including, inter alia, the ensuring of free and fair elections.

40. The rule of law at the international level was of the utmost importance in achieving the objectives of peace and security as well as global development. He agreed that strengthening coordination and the quality of United Nations rule of law activities was a long-term endeavour. Bilateral, regional and international cooperation were all intrinsically linked. Nigeria actively participated in all such levels of cooperation: at the national level, for instance, his Government sent Nigerian lawyers and judges to other countries to help strengthen their judicial systems. The United Nations had an important facilitating role to play in that process. The international community in general must continue to build national capacity in order to combat impunity and strengthen the rule of law.

41. **Archbishop Chullikatt** (Observer for the Holy See) said that the rule of law was the bedrock for development, peace and security. In order for the rule of law to promote true justice, however, a better understanding of the nature of law and justice was needed. The law must serve and protect the common good of the human family. It must also incorporate natural moral law, which introduced a crucial element of human reason to law-making and law enforcement and connected the rule of law to the seeking of truth. Legislative and judicial bodies too often focused only on the empirical perception of human circumstances and on procedural questions concerning the creation and application of law. As a consequence of such positivistic and utilitarian views of the law, private interests or wishes were transformed into legislation that conflicted with social responsibility and duties, resulting in rule by law rather than rule of law and leading to the flawed conclusion that what became legal was therefore just and moral.

42. At the international level, promotion of the rule of law had advanced in recent decades. The importance of international trade and development had led to recognition of the need for just and effective standards and norms that would further enhance international development. Likewise, international labour markets and human migration had both received greater attention from the international community, which had promoted laws that protected the dignity of workers and allowed migrants and their communities to enjoy full legal protections. Continued work and commitment were needed, however, in order create a more just international order. The international community should reform the mandates and rules of the main multilateral financial bodies with a view to ensuring the fair participation of all countries in world financial governance. To that end, the financial institutions should be more closely linked to the work of the General Assembly.

43. The international criminal justice system had seen great progress in the previous year. More States had ratified the Rome Statute of the International Criminal Court, and the Court's ability to hold individuals accountable for the worst crimes against humanity had been enhanced. Efforts to ensure that the Court promoted the rule of law and greater peace and justice must continue, however. While ensuring global and national governance through the rule of law, international leaders and civil authorities must continue to work to remove the perceived conflict between peace and justice and to foster a broader vision that took into account political, social, economic and legal forms of justice and that served the common good.

44. At the national level, efforts to promote the rule of law were hampered by corruption, social and political instability and the lack of resources to implement judicial systems. Partnerships with civil society organizations that provided education and social services based on sound principles of the rule of law were vital to providing the cultural foundation upon which legal systems could be built.

45. With the increasing codification of international legal standards, more States had incorporated those established by international human rights treaties into national legislation. However, the scope of some treaty bodies had expanded beyond the spirit and goals of the relevant treaties and the intent of the States that had adopted them, thereby undermining the international treaty system. In the worst instances, such bodies had actively promoted an interpretation of international human rights standards that ran counter to the fundamental duty of law: to protect life. Treaty bodies must respect the role of States in negotiating and implementing human rights standards and avoid expanding their activities in respect of such standards into areas that went beyond their scope and intent.

46. Individuals responsible for the development of law had a responsibility to ensure that their efforts contributed to the common good by protecting the legitimate interests of every member of society and by ensuring that laws upheld the dignity of the human person, fostered social unity, protected life, promoted the rehabilitation of offenders, restored victims both physically and spiritually and increased trust and understanding among peoples and nations. In the final analysis, that was the aim of the rule of law.

47. **Mr. Young** (Observer for the International Committee of the Red Cross (ICRC)) said that his organization, as a result of its daily work in armed conflicts around the globe, was acutely aware of the need to ensure the effective rule of law at the national level. Only a strong legal framework with appropriate sanctions could ensure that those who breached international humanitarian law would be held accountable and deter the commission of further offences. His organization was actively promoting the rule of law at both the national and the international levels through direct technical assistance to States for the drafting of domestic legislation and through the organization of regional and international meetings that served as forums for the exchange of view between States on the latest developments in international humanitarian law. It had prepared a number of tools to support States in implementing international humanitarian law treaties, including a database of national legislation, and had recently published a manual on domestic implementation of international humanitarian law and a set of guiding principles on the protection of children in situations of armed conflict.

48. In October 2010 the International Committee of the Red Cross would host the third Universal Meeting of National Committees on International Humanitarian Law, where officials from more than 100 States would discuss the important role of domestic law in preventing and responding to serious violations of international humanitarian law. ICRC was also working with various regional and international organizations to encourage implementation of international humanitarian law and enhance the protection of those affected by armed conflict through greater adherence to the rule of law.

49. **Mr. Civili** (Observer for the International Development Law Organization (IDLO)) said that his organization had recently completed the transition to a new governance structure, which had enabled it to refocus its strategic objectives as a catalyst for legal and institutional change and confirm the validity of its mandate and working methods revolving around a multi-stakeholder approach, national ownership, a vision of itself as an enabler and an effort to privilege South-South cooperation.

50. His organization had published the results of the research it had been conducting on building State institutions in post-conflict settings and legal empowerment in a wide range of areas. IDLO looked to research primarily as a guide for action. For instance, in Afghanistan, the organization promoted judicial reform and legal defence services for the poor, and it had established a unit within the Attorney General's office targeting violence against women. In Aceh, it had initiated a project on reducing emissions from deforestation and degradation. Together with UNDP and the Joint United Nations Programme on HIV/AIDS (UNAIDS), IDLO had worked on a legal services toolkit for people living with HIV and projects in selected countries to provide those services. The organization had also developed a comprehensive programme on legal preparedness for climate change that had met with considerable interest from the Alliance of Small Island States.

51. IDLO had made concluding or reinforcing partnerships a key part of its strategies. It participated actively in discussions and events sponsored by the United Nations Rule of Law Unit and increasingly focused its partnerships with other United Nations entities on peacebuilding, with special attention to the rule of law in countries emerging from conflict on the Peacebuilding Commission's agenda.

52. At the regional level, one of the organization's priorities was to translate into effective action the agreement it had concluded with the African Union. The proposed strategy would respond to the Union's immediate capacity-building and institutional development needs in the implementation of the African Peace and Security Architecture and would reinforce the Union's conflict prevention and peacebuilding capacities for the long term.

53. Turning to the Secretary-General's report (A/65/318), he said that his organization concurred with the findings that an incremental approach to policy and institutional development by Member States was most effective in promoting the implementation of international standards. Similarly, it shared the view that capacity-building, the development of local and

regional practices and the formalization of customary practices were often the most constructive ways forward. The development of tools for measuring the effectiveness of rule of law technical assistance was also a priority for IDLO, whose results-based management system and framework for measuring results could inform efforts in that regard. IDLO also supported the approach of furthering national strategies for justice and rule of law reform and shared the view that informal justice systems could play an important role in improving the rule of law internationally. A number of IDLO publications on that subject were available. With respect to the pilot initiative to organize unified rule of law training to enhance staff capacity to implement system-wide approaches to rule of law assistance, his organization was prepared to put its extensive experience in rule of law training at the service of that effort.

54. Referring to the results of Security Council debates on the rule of law and the outcome of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, which explicitly acknowledged the contribution of the rule of law to socio-economic development, IDLO saw those as validating its comprehensive approach to the rule of law and its holistic concept of human progress, which encompassed both security and socio-economic dimensions. The international reactions to those events showed increased recognition of the need for tools to bridge both ends of the security-development spectrum. His organization believed the rule of law to be among the most effective tools in that regard. The time was ripe for the United Nations to hold a high-level event of the General Assembly on the rule of law in 2011 as proposed in the Secretary-General's report.

Agenda item 86: The scope and application of the principle of universal jurisdiction (A/65/181)

55. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the Movement, while respecting universally recognized principles concerning the administration of justice, firmly believed that the principles enshrined in the Charter, particularly the sovereign equality of States and non-interference in internal affairs, should be strictly observed in any judicial proceedings. The exercise of criminal jurisdiction over high-ranking officials entitled to immunity under international law before the courts of other States violated the principle of sovereignty. The Movement was particularly concerned about the political and legal implications of the invocation of universal jurisdiction in violation of the principle of immunity of State officials against some member countries. In that regard, it noted that the African Union, while reiterating its commitment to fight impunity, had called for immediate termination of all pending indictments initiated in blatant abuse of the principle of universal jurisdiction.

56. Although universal jurisdiction could be a tool to prosecute the perpetrators of certain serious crimes under international treaties, there was some controversy about the range of the crimes to which it applied and the conditions for its application. The Non-Aligned Movement cautioned against unwarranted expansion of the crimes considered to fall under universal jurisdiction. In its discussions on how to prevent misapplication of the principle, the Committee could draw upon the judgments of the International Court of Justice and the work of the International Law Commission. The Movement stood ready to share information and to consider all options and mechanisms to ensure that proper application of the principle served the interest of justice without hampering the sovereign rights of States.

57. **Ms. Quezada** (Chile), speaking on behalf of the Rio Group, said that universal jurisdiction was an exceptional institution of international law allowing for the exercise of criminal jurisdiction in order to combat impunity. International law thus established the framework for its application. Universal jurisdiction should not be confused with the international criminal jurisdiction exercised by international criminal tribunals or with the obligation to extradite or prosecute (*aut dedere aut judicare*).

58. Although the Committee was still at a preliminary stage in its work, the information provided by States offered an opportunity to identify points of agreement and issues requiring further examination. It should approach the topic from a strictly legal point of view and base its debate exclusively on the parameters and foundations of international law. The Committee should explore the possibility of establishing a working group on the issue, without, however, duplicating the work of other United Nations entities, in particular the International Law Commission.

59. **Mr. Katemula** (Malawi), speaking on behalf of the African Group, said that the Group was gravely concerned about the abuse of the principle of universal jurisdiction. In applying the principle, it was important

to respect other international norms, such as the sovereign equality of States and the immunity of officials under customary international law, a principle recently reaffirmed by the International Court of Justice. In that light, the African Group insisted that arrest warrants issued by foreign courts against sitting African Heads of State and Government or other high-ranking officials on whom international law conferred immunity should be vacated and any such prosecutions dropped.

60. There was as yet no generally accepted definition of universal jurisdiction and no agreement on which crimes, other than piracy and slavery, it should cover or on the conditions under which it would apply. If few States had responded with information about their practice on universal jurisdiction, it was because the principle hardly existed in most domestic jurisdictions. Those non-African States that had justified their arbitrary and unilateral exercise of universal jurisdiction on the basis of customary international law should remember that, according to the precedent of the International Law Court of Justice, a State relying on a purported international custom must demonstrate that the alleged custom had become so well established as to be legally binding on the other party.

61. The call for clarification of the scope and application of the principle of universal jurisdiction should not be taken to mean that the African States were not committed to the fight against impunity. African States had supported the establishment of the ad hoc tribunals for Rwanda and Sierra Leone, and the majority of African States were parties to the Rome Statute of the International Criminal Court. Many had ratified optional protocols to human rights instruments permitting individual complaints or grievance procedures. In addition, the Constitutive Act of the African Union accorded the Union the power to intervene in the affairs of its member States in situations of genocide, war crimes and crimes against humanity.

62. Nor were the African countries alone in their concerns; what they and other like-minded States were demanding was for the international community to adopt measures to put an end to the abuse and political manipulation of the principle of universal jurisdiction. In the absence of a clear definition and agreement as to the scope of application of the principle, chaos would result if States or domestic tribunals arrogated to themselves the power to make international law to suit parochial national interests.

63. **Mr. Morrill** (Canada), speaking on behalf of the CANZ countries (Australia, Canada and New Zealand), said that universal jurisdiction was a long-established and important principle of international law. Universal jurisdiction allowed any State to exercise criminal jurisdiction on behalf of the international community over individuals responsible for the most serious crimes of international concern, regardless of where those crimes were committed or the nationality of the accused. It was in the interest of all members of the international community to ensure that such crimes were suppressed and that their perpetrators did not enjoy impunity.

64. The heart of the debate was not the meaning of universal jurisdiction but the competing jurisdictions it created. Ideally, investigation and prosecution should take place in a State with a strong nexus to the relevant conduct. Territorial States were best placed to gather evidence, interview witnesses and enforce sentences. The CANZ countries therefore called upon all States to ensure that the most serious crimes of international concern were covered in their domestic laws and that effective jurisdiction could be exercised when the crimes were committed on their territory or by their nationals. The State in the best position to prosecute should do so, and other States should provide all possible cooperation and support. Moreover, States should provide practical assistance to develop the capacity of domestic criminal justice systems to investigate and prosecute grave crimes.

65. In reality, however, many perpetrators went unpunished for a number of reasons, including the movement of accused persons across international borders and a lack of resources to undertake complex and often controversial investigations and prosecutions. In such situations, universal jurisdiction was an important complementary mechanism. The CANZ group encouraged all States, consistent with their international obligations and domestic law, to assist national courts in prosecuting serious international crimes.

66. It was of paramount importance that universal jurisdiction should be exercised in good faith and in a manner consistent with other principles of international law. Moreover, the exercise of universal jurisdiction often entailed formidable practical problems. Preferably, then, there should be a link between the offence and the forum State, such as the presence of

the accused or the presence of evidence on the territory of the forum State.

67. There was still disagreement over the scope of application of universal jurisdiction, but that question should not be confused with the equally important but separate issue of immunity from prosecution. The CANZ countries urged that the dialogue on universal jurisdiction should not be taken over by a discussion of immunity, but should focus on ensuring that no perpetrator of the most serious crimes of international concern should go unpunished.

68. **Mr. Tag-Eldin** (Egypt) said that the principle of universal jurisdiction, deriving from international conventions relating to genocide, war crimes, crimes against humanity, slavery and torture, was an important means of ensuring that those who committed such heinous crimes were brought to justice. Their exceptional gravity made the suppression of such crimes a matter of concern to all members of the international community. It was a well-established principle that primary responsibility for investigation and prosecution of the crime rested with the State where the crime was committed. However, universal jurisdiction helped to cover jurisdictional gaps and could act as a deterrent.

69. Nonetheless, controversy remained concerning the range of crimes to which the principle applied and the conditions for its application. Identifying its scope and limits was important in order to arrive at a balance between avoiding impunity and preserving amicable relations among States. Those applying the principle of universal jurisdiction should avoid abuse, selectivity, double standards or politicization. Egypt reiterated its support for the various decisions adopted by the African Union expressing grave concern over the abuse of the principle, particularly in respect of African leaders and officials in violation of the principle of immunity. His delegation welcomed the views expressed by others regarding the importance of exercising jurisdiction in good faith and in full conformity with other rules of international law.

70. **Ms. Rodríguez-Pineda** (Guatemala) said that universal jurisdiction, a criterion for attributing jurisdiction, was a fundamental procedural tool for combating impunity for the most serious crimes of concern to the international community. However, its application was limited, not only in terms of the crimes to which it applied, but also in being subsidiary and applicable strictly within the framework of international law. The Guatemalan Penal Code allowed for universal jurisdiction by providing that extraterritorial jurisdiction could be exercised in the case of crimes committed outside the territory of Guatemala that were punishable under conventions to which Guatemala was a party. There would no doubt be intense debate over whether universal jurisdiction was based on treaty law or international customary law.

71. An important aspect of the Committee's work was to determine which crimes were covered by universal jurisdiction, since there were considerable differences of opinion in that regard. Without attempting to draw up an exhaustive list, her delegation wished to emphasize that the crimes identified should be serious crimes of the greatest concern to the international community; that category was not necessarily equivalent to "international crimes", a vague term that was used to refer either to crimes defined in international conventions or to crimes subject to the jurisdiction of an international tribunal. Nor should universal jurisdiction be confused with the international criminal jurisdiction exercised by international tribunals, such as the International Criminal Court, or with the obligation to extradite or prosecute (*aut dedere aut judicare*), which could be based on a different form of jurisdiction and could apply to crimes other than those covered by universal jurisdiction.

72. It should be borne in mind that it was national courts that applied universal jurisdiction and considered which crimes justified it, to what extent the court was obligated to exercise it, what competence the court had and which law should apply. While seeking to combat impunity by strengthening the mechanisms of accountability, the international community needed to achieve greater standardization in the use and application of universal jurisdiction in order to avoid abuses.

73. The diversity in the responses from States reflected in the Secretary-General's report (A/65/181) underlined the need to develop a United Nations stance on universal jurisdiction. The Committee should once again request a report from the Secretary-General with contributions from Member States and should establish an open-ended working group to consider that report and discuss the following points: the sources of universal jurisdiction; the crimes to which it applied; the priority or subsidiarity of universal jurisdiction; the

relationship with the *aut dedere aut judicare* rule; the permissibility of trial *in absentia*; the requirement of links with the forum State; exceptions to universal jurisdiction; mechanisms to strengthen cooperation and overcome impediments to the exercise of jurisdiction; and, lastly, the title of the agenda item, which incorrectly referred to universal jurisdiction as a "principle".

74. **Mr. Nikolaichik** (Belarus) said that his delegation recognized the importance of the principle of universal jurisdiction as a means of realizing the desire of the international community to prevent impunity for crimes against humanity and other serious crimes. The concept of universal jurisdiction was not explicitly contained in his country's domestic law. Nevertheless, in its legal doctrine universal jurisdiction was understood as the possibility for a State to prosecute serious crimes regardless of where they were committed or the nationality of the perpetrator or the victim. Unlike other forms of jurisdiction, which were based on the circumstances of the crimes, universal jurisdiction was based on the universal condemnation of international crimes that harmed the international community as a whole.

75. Agreement needed to be reached on a list of crimes to which the principle of universal jurisdiction applied. In addition to piracy, Belarus considered it appropriate to include crimes against peace, war crimes and crimes against humanity in that list. The perpetrators of those crimes could be prosecuted under the provisions of the Belarus Criminal Code and those of the international conventions to which Belarus was a party. In addition, the Belarus Criminal Code allowed for the extraterritorial prosecution of other serious crimes, such as genocide, the use of weapons of mass destruction and human trafficking, among others, as defined in binding international agreements to which Belarus was a party, independent of the criminal law in force in the country where the crime had been committed. A mandatory condition for bringing individuals accused of those crimes to justice was the absence of a conviction for those crimes in another State.

76. Belarus applied extraterritorial jurisdiction only with respect to crimes specified in the relevant international agreements to which it was a party, and it considered a treaty-based approach to universal jurisdiction most appropriate at the current stage. The desire to promote the principle of universal jurisdiction should be balanced against the degree to which States were prepared to implement it. In exercising universal jurisdiction, it was of the utmost importance to respect the principles of the sovereign equality of States and non-interference in internal affairs enshrined in the Charter of the United Nations and to ensure the rule of law. It was also important to rid the principle of universal jurisdiction of shortcomings resulting from the use of double standards, the lack of functioning international cooperation mechanisms, the absence of a clear list of crimes to which the principle would apply and the application of the principle to individuals in possession of privileges and immunities.

77. Belarus saw value in some of the work already done on the legal aspect of the principle, such as the Princeton Principles of Universal Jurisdiction, in particular as regards the list of crimes covered by it. It was to be hoped that the International Law Commission would conduct an in-depth and impartial study of the principle and the stated positions of States in the context of its examination of the obligation to extradite or prosecute (*aut dedere aut judicare*), which was closely related to the concept of universal jurisdiction.

78. **Mr. Rodríguez** (Peru) said that the considerable number of States from all continents responding to the Secretary-General's request for information demonstrated that the topic of universal jurisdiction was of global importance. From those responses and the debate on the item the following points could be deduced concerning universal jurisdiction: it was a basis of jurisdiction enabling States to punish certain serious crimes defined by international law; it must be exercised in conformity with international law, in particular human rights law; it was complementary to other bases for jurisdiction; it differed from the obligation *aut dedere aut judicare* and from international criminal jurisdiction, which was exercised by international tribunals; and it was an indispensable tool for combating impunity.

79. There appeared to be differences of opinion, however, on the crimes to which it applied; the source of law for each crime; which conventions provided for the exercise of universal jurisdiction; how to coordinate concurrent jurisdictions; and whether a link with the forum State (such as the presence of the accused in the State's territory) was required.

80. The item might need to be narrowed to focus on the criminal responsibility of the individual, to the exclusion of civil liability. His delegation supported the formation of a working group of the Sixth Committee to identify the points of agreement and the areas where further study was required in order to reconcile the diversity of views. It could usefully draw upon the work done by the International Law Commission on related topics, such as the obligation to extradite or prosecute (*aut dedere aut judicare*) and the immunity of State officials from foreign criminal jurisdiction, and by other United Nations entities on universal jurisdiction as a tool for combating impunity.

The meeting rose at 1 p.m.